series of hearings, four hearings on the subject, one of which involved the militia where law enforcement officials from the FBI, the Bureau of Alcohol, Tobacco and Firearms, the State police chief from Missouri, and prosecuting attorneys from Phoenix, AZ, and Musselshell County, MT, came forward and testified about the dangers of the militia and at the same time, same hearing, a second panel testified about the reasons why the militia are growing in the United States, members of the militia talking about the distrust of what goes on in Washington, accusing the committee, accusing the Senate, accusing this Senator of corruption, and a very heated exchange followed in which I did not take that accusation lightly. And I do not. But I must say, Mr. President, that I worry about our country when this kind of information is open and notorious and there is no response from this body, from the Judiciary Committee, to have these oversight hearings.

I think that when you now have, beyond the issues which I have raised, where you now have the lead story in this morning's Washington Post, under the banner headline, ''Probe of FBI's Idaho Siege Reopened,'' detailing the destruction of documents on top of the contradictions and problems in this investigation, that this is highly likely to produce the kind of public pressure which it appears is the only way to get any results on a matter of this sort.

Mr. President, I think it is a matter of the utmost gravity and the utmost seriousness, and we sit really on a powder keg with a lot of distrust and anxiety and anger welling up across the country as to excessive action by the Federal Government. Accountability at the highest levels is absolutely mandated, and it is the responsibility of the Congress and the Senate and the Judiciary Committee to conduct these oversight hearings and, in addition to having discussed these matters privately with the appropriate authorities within our own body, I think it absolutely necessary to make the statement as forcefully as I can to urge that these hearings be conducted, conducted promptly and, in any event, before we adjourn for the August recess.

TRIBUTE TO FRANCIS J. BAGNELL

Mr. SPECTER. Mr. President, I would now like to take the few minutes remaining before morning business expires, in the absence of any other Senator on the floor, to comment on the passing of a great American, Francis J. Bagnell, commonly known as ''Reg'' Bagnell, who, as we speak, is having memorial funeral services conducted in the Philadelphia suburbs.

Reg Bagnell has been an outstanding figure in the Philadelphia area in Pennsylvania and in America as a contributor to important causes. He achieved legendary fame as a young football player at the University of Pennsylvania in the fall of 1946. Reg Bagnell and I were classmates at the University of Pennsylvania in 1951. And I was one of those who sat in the stands and admired his prowess. He weighed about 160 pounds and played tailback. On the old single wing on one glorious autumn day in 1946, he threw 14 consecutive passes against Dartmouth. And he followed his all-American status by being an all-American contributor to the American scene. And I thought it appropriate to take just a few moments to recognize Reg Bagnell's great contribution, not only as an athlete but as a community activist and as a great American.

I see it is now 10:45, Mr. President, the time to adjourn morning business, so I conclude and yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order the hour of 10:45 having arrived, morning business is closed.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 343. The clerk will report.

The legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 1487, in the nature of a substitute.

Roth/Biden amendment No. 1507 (to amendment No. 1487), to strengthen the agency prioritization and comparative risk analysis section of the bill.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. Mr. JOHNSTON is recognized.

Mr. JOHNSTON. Mr. President, last night after I had left the Chamber and repaired to my home, a cloture motion was filed on this bill of which I was totally unaware. Mr. President, I believe that that was exactly the wrong thing to do on this bill. I believe we were making good bipartisan progress on this bill. It is a difficult, complicated bill. I think the legislative process was proceeding, if not with dispatch, at least with a spirit of dealing with the issues. And I think we have begun to make great progress.

Just overnight last night, for example, in a good spirit of bipartisan progress, I understand we have worked out the Roth amendment, I believe to the satisfaction of both sides. That will remain to be seen. But I believe that is so. I think we had a session scheduled this morning for 9:30 dealing with some of those on our side of the aisle who, in a spirit of bipartisan cooperation, wanted to try to work out some of the remaining issues. And I think there was some hope that that could take place.

With the filing of the cloture motion, that meeting was called off because our side, the Democratic side, had to repair to put in all of these amendments which had to be prepared by, I think, 1 p.m. today.

Mr. President, I have just come from a meeting with the majority leader and have urged him in the strongest way possible to withdraw the cloture motion, to let us continue on in a bipartisan spirit to work our way through these amendments. I have not seen yet on this bill delaying tactics. All of the amendments which have been proposed obviously have not been amendments which I have agreed with. But I think they were legitimate amendments. And on, for example, the cryptosporidium amendment last night—I think that was a serious amendment—there was also a time limit agreed to. And, Mr. President, that is not the stuff of a filibuster, when you have a serious amendment with a time limit. So, I am in good hopes, Mr. President, that we can withdraw that cloture motion and let us legislate.

Today, I hope to deal, for example, with the suggestion that Senator GLENN made yesterday about extending the 180-day period for completion of the cost-benefit analysis when you invoke the emergency provisions of the bill when there is an emergency with respect to health, safety, or the environment. I think we can agree to that. It was a good amendment. I hope we can agree to that.

I am very strongly for removing environmental cleanup or Superfund from this bill. I hope to join with Senator BAUCUS in proposing that amendment this morning. I hope we can get that done with a short time agreement.

So, Mr. President, I have urged the majority leader, as I say, in the very strongest way possible to withdraw the cloture motion. Let us return to legislating rather than having to prepare a finite list of amendments. I will say from my side of the aisle I believe that we can secure cooperation. I do not believe there is a filibuster.

Mr. President, if there were a filibuster, we would not have had, believe me, a 30-minute time limit on cryptosporidium last night. That is a great issue to talk about for days. I mean, it has all those elements—public health, people dying. It is a serious issue. But it was a serious amendment. We took a vote on it. I happen to be for the motion to table, not because I do not have sympathy on the issue—I mean more than sympathy; I think it is a tremendous issue—but because I think we had it taken care of. And I might say that I and others spoke to Senator KOHL last night and said we believe we are confident that this issue has been resolved by the earlier Johnston amendment.

However, we will look at that issue between now and the conference, and if it needs fixing, if there is any assurance that we need to give to people that cryptosporidium will not be a problem, that the regulation of it will

not be hindered or delayed, we are prepared to do that. I know I heard Senator HATCH say that very thing, and I have given that assurance to Senator KOHL. That is the kind of spirit which I think we need on this bill to successfully pass it.

I hear from my caucus that we want a good, reasonable, workable regulatory reform bill. We certainly hear that from the other side of the aisle. We ought to build on that spirit. To be sure, there are differences on how we think we would arrive at that, but they are differences which can be reconciled.

So, Mr. President, I am hopeful that this will be a productive day of legislating; that we will, in fact, withdraw the cloture motion; that we will resume serious legislating in a spirit of bipartisan cooperation.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH] is recognized.

Mr. HATCH. Mr. President, I got here about a quarter to 7 this morning. I happened to have left before the cloture motion was filed myself and was not sure whether the distinguished majority leader was going to do that, which he has every right to do, especially where it is believed there is a delay for delay's sake.

I remember in the last number of Congresses when Senator Mitchell was the majority leader, they would call up a bill and file cloture that day on almost every controversial bill—it was just amazing to me—and accuse us of filibustering right from the word go. We are now on the fourth day of this—actually the sixth. We have had very few amendments, and the ones that we have had are amendments that seem to want to repeat what is already in the bill.

Be that as it may, I showed up for our negotiating session this morning. I had to testify on the Utah wilderness bill at a 9:30 meeting. I showed up and the room was empty. I was prepared, as my distinguished friend from Louisiana was, to sit down with our colleagues on the other side to find out what we can do to narrow the amendments and resolve any conflicts that exist and try to bring us together, if we can.

I have to say, my friend from Louisiana and I have worked long and hard to try and bring us together, to try and accommodate those on the other side who differ with us on this bill.

There are things we have been able to do and there are things we have not been able to do. On the list they provided us, we gave them answers on every one of the items, and most of the answers were that we cannot do this. But there were still some areas where we probably could get together and hopefully resolve some of the differences between the two sides. If we cannot resolve differences and the amendments are really serious and decent amendments, then we will just have it out on the floor. Whoever wins wins, and we just vote them up or down. I am hopeful our side will stand firm against some of these amendments.

Nobody is trying to give anybody a rough time. The majority leader has a lot of pressure on him to get this matter resolved and to save as many days as he can so that we do not cut into the August recess. He has all kinds of things on the plate that need to be heard, so naturally he wants to move ahead. I want to move ahead. The distinguished Senator from Louisiana would like to move ahead. We would like to resolve the difficulties and certainly have people feeling good about it.

I do not think there is any real reason for any person after 5 days on the bill to pitch a hissy fit with the fact that a cloture motion has been filed. That has happened around here all my Senate career. It is not unique. It says, ''Let's get busy, let's work and get this done.'' I hope the two leaders can work out some way of getting this done. I also hope that we can all work together on this floor.

This is such an important piece of legislation that I hope we can all get together on this floor and help bring it about. This legislation will save lives. This legislation will provide the very best science applicable to some of the most important problems and issues of our society. This legislation will solve the problems, or at least go a long way toward solving the problems of the overregulatory nature of our society, and some of the ridiculous regulations that all of us put up with.

I know some have not liked my top 10 list of silly regulations, but I am going to bring them up everyday anyway, because there are those who are very dedicated to the bureaucracy around here. That is where their power comes from. They can have the bureaucracy do what they could never pass on the floor of the U.S. Senate. It does not make any difference what it is going to cost, the bureaucracy just does it. This bill says, no, you are going to have to have a cost-benefit analysis and risk assessment to determine how dangerous it is before you go and saddle the American people with unnecessary costs and tremendous burdens, and you have to be more serious about regulations rather than have these silly, dumbbell regulations that are eating our country alive and costing us billions of unnecessary dollars, to the extent of $6,000 to $10,000 per family in this society.

Let me just give my top 10 list of silly regulations. This is list No. 5.

Let me give you silly regulation No. 10: This is where over two dozen agents, some in helicopters, stormed a farmer's field and seized his tractor for allegedly harming the endangered kangaroo rat. The farmer was never notified that his land was a habitat for the rat, and even the Federal officials were not certain which type of rats were on his land. And yet they came and stopped this farmer from doing his farming that he had done for years on the basis of an alleged harm to an endangered alleged kangaroo rat. That is silly, but that is what our people out there are going through.

Let me give you silly regulation No. 9: Fining a company for worker safety violations such as: a cut in the insulation of an extension cord which had been taken out of service, three citations, and a splintered handle on a shovel, in spite of the fact that the shovel was placed in the back of a truck after it broke.

Now, that is silly, but that is the type of regulation and interpretation of regulations we are going through in this society.

Silly regulation No. 8: Requiring so many procedures that it took a business an entire month to hire just one person. Because of such complexity and the extreme penalties that go with violations, the owner has resolved never, never to hire more than 10 workers, despite the fact that each worker logs 500 hours of overtime in a year. He just is not going to put up with this type of regulation, and having 10 or fewer, he does not have to. Except he did have to spend an entire month to just hire one person.

Silly regulation No. 7: Fining a roofing company for failure to have a fire extinguisher in the proper place, in spite of the fact that it had been moved to prevent it from being stolen by passersby as three other extinguishers had been in the preceding 3 days.

Silly regulation No. 6: Requiring a trucking company to spend $126,000 to destroy nine fuel tanks which were not leaking.

Silly regulation No. 5: Denying a wetland permit application and ordering an elderly couple to remove dirt in an alleged wetland—dirt which had been placed on the land by the city 10 years before the couple bought the lot—only to concede a year later that the couple did not need a permit to have the fill on their land. That is silly.

Silly regulation No. 4: Seeking a $14 million fine against farmers who were accused of violating the Clean Water Act by building a levy to prevent their farm from flooding. That is ridiculous, but that is what they did, a $14 million fine against these poor farmers who just wanted to prevent their farm from flooding.

Silly regulation No. 3: Prohibiting an 80-year-old farmer from farming his land, claiming it was a wetland when a local business accidentally cut a drainage pipe.

I only have two more, and then I will yield to the majority leader.

Silly regulation No. 2: Preventing a company from harvesting any timber on 72 acres of its land because two spotted owls were seen nesting over a mile and a half away. No spotted owls had actually been seen on the company's land.

Let me just go to silly regulation No. 1: Requiring one of our towns in this country to build a new reservoir in

order to comply with the Safe Drinking Water Act and then prohibiting the construction of the reservoir because it would flood a wetland. Fines were threatened if the reservoir was built and if it was not built. So the town did not know what to do. It would be fined either way. That is ridiculous and silly. That is what the American people are putting up with.

We can flood this floor with silly regulations, but we will bring a top 10 list every so often just to remind people of what this is all about: to get rid of this junk and to let us live in more peace and safety in this country.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The majority leader is recognized.

Mr. DOLE. Madam President, first, I want to indicate that I will be meeting with Senator DASCHLE in 2 or 3 minutes. We will be talking about the schedule for the balance of this month and into August.

As I ever said many times—not in any threatening way because it is a matter of fact—there is no question about losing part of the August recess. That is why I have been attempting to move as quickly as possible on this bill so we can go on to what I consider to be the next important thing we need to do before we have the August recess.

I will be going over that list with Senator DASCHLE in a few moments. I do not think it is unreasonable, but it will take the cooperation of all Members, and it will mean, frankly, every day we lose is a day we lose in the recess period, which I think is understandable by most Members.

I listened to the comments of the Senator from Louisiana, and I must say I apologize for not notifying him and others earlier. I had mentioned it in a press conference, and we thought it was fairly public knowledge, that we would file a cloture motion. But more important than the cloture motion is to determine when we can finish this bill and how many amendments there are, and whether we can get time agreements.

We have made some progress, but it has been painfully slow. We started on this bill last Thursday. We had a lot of debate and we did a little debate Thursday before the recess, and a little bit Friday, and we have had 3 days this week.

This is a very important bill. I did not think we would finish it this week, but I would like to finish by next Tuesday. I will discuss that with Senator DASCHLE, and I will have some announcement to all of my colleagues shortly after that time.

AMENDMENT NO. 1507, AS MODIFIED

Mr. ROTH. Madam President, I send a modified amendment to the desk.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The amendment is so modified.

The amendment (No. 1507), as modified, is as follows:

Delete all of section 635 (page 61, line 1 through page 64, line 14 and add in its place the following new section 635:

SECTION 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with a nationally recognized scientific institution or scholarly organization—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(C) Nothing in this subsection should be construed to prevent the Director from entering into a sole-source arrangement with a national recognized scientific institution or scholarly, organization.

(2) CRITERIA.—The Director shall ensure that the arrangement under paragraph (1) provides that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, including opportunities for the public to submit views, data, and analyses and to provide public comment on the results before making them final;

(C) the analysis is conducted by a balanced group of individuals with relevant expertise, including toxicologists, biologists, engineers and exports in medicine, industrial hygiene and environmental effects, and the selection of members for such study shall be at the discretion of the scientific institution or scholarly organization;

(D) the analysis is conducted, to the extent feasible and relevant, consistent with the

risk assessment and risk characterization principles in section 633 of this title;

(E) the methodologies and principal scientific determinations made in the analysis are subjected to independent peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e); and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No latter than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

Mr. ROTH. Madam President, I rise to urge my colleagues to support my amendment to encourage agencies to set risk-based priorities. This amendment incorporates the basic language in S. 291 which I introduced in January and which received bipartisan and unanimous support of the Governmental Affairs Committee. Such language is also in S. 1001, introduced by Senator GLENN.

This language has been modified slightly through negotiations with Senator GLENN and Senator JOHNSTON.

I ask unanimous consent to add the names to my amendment of Senator JOHNSTON and Senator GLENN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Madam President, I ask unanimous consent that on the Roth amendment regarding risk-based priorities, there be 30 minutes for debate, to be equally divided in the usual form, and that no second-degree amendments be in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROTH. Madam President, this amendment would significantly improve upon the current section 635 of S. 343, and it would clarify to the agencies what is expected of them regarding priority setting.

My amendment provides an effective date by which the agencies would set priorities to ensure they achieve the greatest overall risk reduction.

It also defines certain terms such as comparative risk analysis, and most serious risk, to reduce ambiguity about their requirements.

My amendment also lists covered agencies to which this requirement applies.

This amendment will also ensure that the risk study is based on some science. The comparative risk analysis would have to meet the standards for risk assessment, risk characterization, and peer review already provided in S. 343.

The amendment also makes clear that the comparative risk analysis across Federal agencies is institutionalized in agency practice. It is not a one-time event.

Instead of specifying a particular scientific body to conduct a comparative risk analysis, the amendment allows OMB to consult with OSTB in arranging the comparative risk study across Federal agencies.

Madam President, I would like to emphasize that I think it is critically important that we allow full public participation through the risk priority-setting process, and that this amendment assures an open process, allows public comment, and requires that policy judgments in the risk study be separated from scientific determination.

In sum, this amendment will allow Members to be confident that the agencies will use the results of the comparative risk analysis in a meaningful way. It will help ensure that we generate or obtain greater risk reduction at less cost.

Madam President, I would like to take some time to speak about the need for this amendment and what it would require. I believe that setting risk-based priorities offers the best opportunity to allocate rationally the resources of both the government and the private sector to protect human health, safety, and the environment.

With this tool of comparative risk analysis, we can make our health, safety, and environmental protection dollars go farther, providing greater overall protection, and saving even more lives than the current system.

The purpose of my amendment is to, one, encourage Federal agencies engaged in regulating risk to human health, safety, and the environment, to achieve the greatest risk reduction at the least cost practical; two, promote the coordination of policies and programs to reduce risk to human health, safety, and the environment; three, promote open communications among the Federal agencies, the public, the President and Congress regarding environmental health and safety risks and the prevention and management of those risks.

There is widespread support for setting risk-based priorities by many distinguished experts. As the blue ribbon Carnegie Commission panel noted in its report, ''Risk in the Environment,'' the economic burden of regulation is so great and the time and money available to address the many genuine environmental and health threats so limited, that hard resource allocation choices are important.

In the same vein, in 1995, National Academy of Public Administration report to Congress entitled ''Setting Priorities, Getting Results,'' recommends that the Environmental Protection Agency use comparative risk analysis to identify priorities, and use the budget process to allocate resources to the agencies priorities.

The NAPA report recommends that Congress ''could enact specific legislation that would require risk-ranking report every 2 to 3 years. Congress should use the information when it passes environmental statutes or reviews EPA's budget proposals.''

A national comparative risk analysis also was one of the chief recommendations of the Harvard Group on Risk Management Reform in their March 1995 report ''Reform of Risk Regulation: Achieving More Protection at Less Cost.''

Justice Steven Breyer has emphasized the need for risk-based priorities in his outstanding book ''Breaking the Vicious Circle: Toward Effective Risk Regulation.''

Finally, I should note that this idea has its roots in two seminal reports, ''Unfinished Business'' (1987) and ''Reducing Risks.''

To provide greater protection at less cost, I believe the Federal Government must systematically evaluate the threats to health, safety and the environment that its programs address, and determine which risks are the most serious, most amenable to reduce in a cost-effective manner.

This amendment requires each designated agency to engage in this evaluation among and within the programs it administers to better enable the President and Congress to prioritize resource agencies. The risk addressed by all of the designated agencies would be evaluated and compared.

Now, the purpose of these analyses is not to dictate how the government uses its resources but to provide Congress and the President with the information to make better informed choices.

These analyses will be useful for identifying unaddressed sources of risk, risks borne disproportionately by a segment of the population, as well as research needs.

This information will foster a clear reasoning for regulating in one area over another, or allocating resources to one program over another.

Finally, conducted in the public view, these analyses are likely to enhance public debate about these choices and ultimately create greater public confidence in government policy. Hard data will form the underpinnings of the analysis.

Public values must be incorporated when assessing the relative seriousness of the risk and when setting priorities. After all, scientific data alone cannot say which of the following is at greater risk or which should be addressed first. Neurological damage, heart disease, birth defects, a plane crash, or cancer.

The comparative risk analysis should be conducted in such a way that public values are asserted and considered. This will require including public input and the comparative risk analysis. When the analysis is completed, it should be clear to the public and the policy makers which part of the risk comparison reflects science and which part reflects value.

To encourage the use of risk-based priorities, my amendment requires not only that each agency set risk-based priorities for its programs, but also for the OMB to commission a report with an accredited scientific body, to study the methodologies of comparative risk analysis and to conduct such an analysis to compare risk across agencies.

The priorities identified must be incorporated into the agency budget, strategic planning, regulatory agenda, enforcement, and, as appropriate, research activities. When submitting its budget request to Congress each agency must describe the risk prioritization results and explicitly identify how the requested budget and regulatory agenda reflect those priorities.

Subsection (d) requires the Director of the Office of Management and Budget to have an accredited scientific body conduct a comparative risk analysis of risks regulated across all agencies.

Because comparative risk analysis is still a relatively new science, particularly when used to compare dissimilar risks, subsection (d)(4) requires that, even while the comparative risk analysis is being conducted, a study be done to improve the methods and use of comparative risk analysis. The study should be sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs to achieve the greatest degree of risk prevention and reduction.

Subsection (e) requires each covered agency to submit a report to Congress and the President no later than 24 months after the date of enactment of the act, and every 24 months thereafter. The reports should describe how the agencies have complied with subsection (c) and present the reasons for any departure from the requirement to establish priorities. The reports should identify the obstacles to prioritizing their activities and resources in accordance with the priorities identified. At this time, each agency should also recommend those legislative changes to programs or statutory deadlines needed to assist the agency in implementing those priorities.

This report back to Congress is a very critical element in readjusting the Federal Government's priorities so that we can truly achieve the greatest degree of protection for health, safety and the environment with our resources. Congress needs this information to make the necessary changes.

Madam President, we all know that this is a time of limited budgets and economic uncertainty. I believe that most of us recognize the need to reduce the regulatory burden that costs the average American family about $6,000 per year. But at the same time, the public highly values a clean environment, safe workplaces, and safe products. And I must add, that I deeply share these values. I am an environmentalist—proud to be an environmentalist. I want to reduce unduly costly regulations, but still ensure that important benefits and protections are provided. So the goal I seek is smarter regulation.

This amendment will promote smarter regulation. It will provide much-needed reform, not rollback. I ask my colleagues on both sides of the aisle to support this language—as they have done in S. 291 and S. 1001.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Madam President, I rise to support this amendment by my friend from Delaware, our committee chairman. I think he is doing a service by proposing this amendment.

He recognizes we cannot do everything. We do not have money enough to do everything we would like to do. We are trying to reform regulations. We are trying to cut back on regulations, onerous regulations. At the same time, what he is addressing is, even where we are trying to make serious approaches to matters like health and safety and so on, where we know we should be doing something in setting new standards for the whole Nation and for every single person, we will not have money enough to do all the things people out there would want done. What he is saying is we have to prioritize these.

How do you do that? How do you make sure you get the greatest good out of every dollar that we spend on health and safety matters? There were a couple of key words there. This is a young science. That is exactly what it is. This comparative risk analysis is a fairly young science and it is a new methodology that is being put forward in how to deal with this. Most scientists who are involved with this, I believe, feel it has tremendous promise and can really guide us into doing a better job of setting our priorities at the Federal level.

It can also tell us some things we should not do, by setting these priorities. It is not just to say we are going to try to do everything so now we will set the priorities of one, two, three, four; how we do these things and include everything in just because somebody came up with the idea. Comparative risk analysis can also say it is going to cost you so darned much to do this, or something else, we just cannot do that. So we would be better off taking that money and do overall more good in the long haul by spending that amount of money on something else, or two or three other things that might improve health and safety or whatever.

So I am glad to support this. I believe I was added as a cosponsor a few moments ago. I think the distinguished author of this amendment asked I be included. If not, I do wish to be included as a cosponsor on this. I am glad to support it. I do not know of any opposition. I do not know whether the Senator from Louisiana wants to speak on this or not, but after he has had time to make remarks, I would be prepared to accept the amendment on our part.

The PRESIDING OFFICER. The Senator from Ohio is listed as a cosponsor.

Mr. GLENN. I thank the Chair.

Madam President, I yield whatever time the Senator from Louisiana needs.

Mr. JOHNSTON. Madam President, I commend Senator ROTH, not only for the amendment, but the spirit of compromise that has made this amendment possible. It shows what we can do. Senator ROTH has contributed so much to this whole bill and the whole issue of risk analysis and a risk assessment and

regulatory reform. This is but one additional indication of that.

The amendment, as offered, enables but does not require participation by the National Academy of Sciences in developing methodologies for comparative risk analysis. It applies to a finite list of agencies who would be encouraged to adopt risk-based priorities, and will ensure that risk studies are based on sound science.

Madam President, it is a good amendment. I support it. I am glad to be a cosponsor of it. And, again, I congratulate Senator ROTH for his leadership in this area.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Madam President, I thank my distinguished colleagues, the Senator from Ohio and the Senator from Louisiana, for working with me to amend this proposal so it was acceptable on both sides of the aisle.

I will be frank. I think it is a critically important amendment. I think we must, if we are going to accomplish the good we all desire, prioritize across agencies and within agencies. This will help enable us make better use of the resources that are available to make the quality of life better for the American people.

Madam President, I urge acceptance of the amendment.

The PRESIDING OFFICER. Do the Senators yield back their time on this amendment?

Mr. GLENN. Madam President, all time is yielded back on this side.

Mr. ROTH. I yield back my time.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1507), as modified, was agreed to.

Mr. ROTH. Madam President, I move to reconsider the vote.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROTH. Madam President, I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1516 TO AMENDMENT NO. 1487

Mr. JOHNSTON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 1516 to amendment No. 1487.

Mr. JOHNSTON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, line 19, strike out ''180 days'' and insert in lieu thereof ''one year''.

Mr. JOHNSTON. Madam President, the Senator from Ohio [Mr. GLENN] pointed out day before yesterday a real fault with this bill, which was that the provision on page 25 of the so-called Dole-Johnston amendment relating to health, safety, or emergency exemptions from the cost-benefit analysis, provides that a rule may go into effect immediately if an agency for good cause finds that conducting cost-benefit analysis is impractical due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources. But under that rule, not later than 180 days after the promulgation of such rule, the agency must comply with the subchapter; that is, they must complete the cost-benefit analysis, and under another section of the bill can complete a risk assessment if that is required.

Madam President, 180 days, as the Senator from Ohio pointed out, simply is not enough time to get this done. This amendment extends that period to 1 year. So that, if there is a threat to the public health, safety or the environment, or if there is any kind of emergency, the agency can promulgate the rule, get it out, put it into effect immediately upon the declaration that they do not have time to do otherwise. This would give them then the year to do the cost-benefit or the risk analysis.

Keep in mind also that under other provisions of this bill cost-benefit analysis and risk assessment may be done in such form as is appropriate to the circumstances; that is, it can be done informally sometimes. Under some circumstances, for example, scientific reports which had been peer reviewed could be used and put into the record in lieu of conducting a brand-new peer review risk assessment. So we believe this would be enough time appropriately to finish such a review.

I want to thank the Senator from Ohio for pointing this out. It will make this a much better bill.

Mr. GLENN. Madam President, I think this certainly is a move in the right direction. We discussed this informally a couple of days ago. I hope the year is adequate. I guess if we are discussing this again I might suggest a little longer time or at least put a waiver in for the President or something, and, if at the end of the year they really just cannot do it in that period of time, that the President be granted a waiver authority in that event. That would cover all bases it seems to me for the health and safety for all of our people.

But certainly the doubling of time from 180 days to 365, to a full year, is a step in the right direction. I think by far the greatest percentage of cases this would certainly cover. They could do the analysis and the assessments and all the things that are required within that period of time.

So I would be prepared to accept this. I have a little bit of doubt in my own mind as to whether 1 year covers all of the situations we might run into without having a Presidential waiver at the end of that in case they were really up against it in some analysis.

I do not know whether the author of this, the Senator from Louisiana, would consider granting the President a waiver on the end of that. But in any event, I am prepared to accept the 1 year.

Mr. JOHNSTON. Madam President, I think the Senator's suggestion is a good one which I think we ought to move forward with in the conference committee. I will point out that there is nothing here that let us say they could not get done in a year. There is nothing in this language that says it is only a one-shot deal. They can put forth another major rule at the end of that year and start the 1-year process all over again. So the emergency is really protected by the fact that it says that you can. But in any event, I would be more comfortable with some kind of Presidential waiver. I think we could work on that between now and conference.

Mr. GLENN. Good. I think with that understanding, I am prepared on our side of the aisle to accept this amendment. I think it is good with the length of time. It will protect the health and safety and protect everybody.

Mr. ROTH. Could I ask the distinguished Senator, what is the understanding?

Mr. GLENN. Just that we work further. The Senator from Louisiana is extending the time period from 180 days to 1 year, where that might be necessary to go back. And I mentioned the other day that the 6 months is hardly enough time to do another complete analysis the way these risk assessments and analyses go, and suggested that we lengthen that out to a year. This would be on a re-analysis. The Senator from Louisiana agreed with that.

I would just question whether there might be some cases—I think they would be rare—where we require really more than a year because some of these things in the original or in the first instance takes several years, 4 or 5 years sometimes, to work out all the rules and regulations. But I think in most cases it would be covered by the 1 year.

I am happy to go along with that. What we were discussing was putting something in this also, if at the end of a year there was still a health and safety matter that was still being worked out, to give the President a waiver authority to go beyond that 1-year period. The Senator from Louisiana was pointing out also that the President could introduce a whole new process. I would not think that would be necessary.

Mr. ROTH. I would say that I can support the amendment proposed by

my distinguished colleague from Louisiana. I would certainly be happy to look at the suggestion from the Senator from Ohio. I think it is important that our process be realistic, that we do not expect the impossible from the agencies.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of Senator from Louisiana.

The amendment (No. 1516) was agreed to.

Mr. JOHNSTON. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Madam President, while the majority leader is on the floor, I would like to send an amendment to the desk and see if we can deal with this at this time.

AMENDMENT NO. 1517 TO AMENDMENT NO. 1487

(Purpose: To delete the section on ''Requirements for Major Environmental Management Activities'' relating to cleanups under the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and other similar activities)

Mr. JOHNSTON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. BAUCUS, for himself, Mr. JOHNSTON, and Mr. LAUTENBERG, proposes an amendment numbered 1517 to amendment No. 1487.

Mr. JOHNSTON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all of section 628 (on page 42 beginning at line 3 strike out all through line 13 on page 44) and renumber section 629 as section 628.

On page 73 in the table of contents for SUBCHAPTER II—ANALYSIS OF AGENCY RULES, replace ''628. Requirements for major environmental management activities'' with ''628. Petition for alternative method of compliance.''

On page 57, lines 6 and 7 strike out the phrase ''or a major environmental management activity''.

Mr. JOHNSTON. Madam President, this is the amendment which removes from the bill the environmental cleanup, or so-called Superfund activities.

I ask for the majority leader's attention on this matter because we talked about that this morning. I understand that the majority leader may be willing to withdraw the Superfund provisions from the bill. I also understand that Senators may prefer it be withdrawn by unanimous consent rather than have a vote on it. If that is possible, we would be delighted to have that done at this time. That would avoid the debate and the vote.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Madam President, if I could come back to that in just a moment, I think we are about to get a consent agreement here. The Democratic leader is on the floor.

First, let me indicate that after discussion with the Senator from Louisiana this morning, I did, as I indicated, have a meeting with the distinguished Democratic leader, Senator DASCHLE, with reference to the cloture motion and the cloture vote.

Obviously, we both have the same interest. We want to finish the bill. We do not want to shut off debate, but we do not want delay on either side—either side. And I regret not having a chance to indicate to the leader personally that the cloture motion would be filed last night, or to the managers. I was at home watching on C–SPAN the reaction of Senator GLENN and others.

So what we have agreed to, and I will now propound that request—and then the Senator from South Dakota may have a comment—I ask unanimous consent that the cloture vote scheduled to occur on Friday be postponed to occur on Monday at a time to be determined by the two leaders but not before 5 p.m.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Madam President, reserving the right to object, and I will not object, I would first clarify with the majority leader that first-degree amendments would still be in order at least as to their filing up until the close of business on Friday. Is that the understanding of the majority leader?

Mr. DOLE. That is correct.

Mr. DASCHLE. I think that would accommodate a lot of the needs of many Senators on our side. As we indicated last night, many of us felt that the filing of the cloture motion was unfortunate, premature, but I think this will allow us to keep working in a meaningful way.

I think it is clear that both sides, Democrats and Republicans, want to accomplish a good deal with regard to regulatory reform, and I think there is a lot of progress that has been made. We have raised a number of issues. While they have not been addressed and resolved to our satisfaction in some cases, these amendments have been proposed in good faith and have raised very important issues.

I am hopeful we can continue to do that today. I am hopeful that at some point between now and Monday we will have the opportunity to debate the Democratic substitute, and we will simply take a look on Monday as to where we are and how much progress we have made as to what our position on cloture will be. But this certainly accommodates the need to allow Senators to come to the floor, to propose their amendments, and to have good debate. I think in many cases that can be done with short timeframes and perhaps some without rollcall votes. I would hope we could continue negotiations as well. I think we have made progress in many areas off the floor, and I hope that effort could continue as well. So I think the majority leader has advanced the effort here substantially, and I would encourage support of the motion.

Mr. JOHNSTON. Madam President, will the minority leader yield for a question?

The PRESIDING OFFICER. Does the minority leader yield?

Mr. DASCHLE. I will be happy to yield. The floor is the majority leader's.

Mr. DOLE. That is all right; I will be happy to yield for a question.

Mr. JOHNSTON. I had urged the majority leader today not to go forward with the motion. I am glad he has delayed it. Does this delay meet with the full approval of the minority leader?

Mr. DASCHLE. I say to the distinguished Senator from Louisiana, who has probably had as much to do with this bill as anybody, this is a very important step procedurally. I think, as I said, this allows us to go forth with additional amendments, perhaps with the substitute, so I think it accommodates the needs of Senators on both sides, and I am enthusiastic about the change that is proposed here today.

Mr. JOHNSTON. I thank the minority leader, and I thank the majority leader for his willingness to accommodate this legislative process.

The PRESIDING OFFICER. Is there objection to the request? If not, the Chair hears none, and it is so ordered.

Mr. DOLE. Madam President, let me further ask, following along what the Senator from South Dakota suggested, that first-degree amendments may be filed up to the close of business on Friday, July 14, or if the Senate recesses prior to that time, early, they may be filed up until 4 p.m. on Friday, even if we were out of here by 1 o'clock.

So let me also indicate that I appreciate the cooperation, and I believe that there is a determined effort on both sides to pass a good regulatory reform bill. That is my conclusion after visiting with the Democratic leader and after visiting with the Senator from Louisiana [Mr. JOHNSTON].

As I have indicated before, what the leader is trying to do, and the leader has that responsibility, is move the program, and I would like to insert in the RECORD at this point a tentative agenda between now and the time we leave here in August. Hopefully it will be August when we leave here for recess. And I will ask to have that printed in the RECORD.

I will just say, to highlight it, it has us completing this bill on Tuesday, and then we have Bosnia. And then we have appropriations next Thursday and Friday, and then the Ryan White provision on July 24, the gift and lobbying bill on that date if possible. Then we get into the State Department and foreign ops authorization bill, which will take us up to July 29, and then the

DOD authorization and DOD appropriations bills would take us up until August 5, and then begin welfare reform on August 7. And whenever we concluded our business on welfare reform, the recess would begin.

Now, all these things are, of course, subject to change because if we do not keep up on the schedule, it obviously pushes us further into August. If everything worked as we would like it to work, it is possible we could begin the recess even before August 12.

I ask unanimous consent that this be printed in the RECORD so that everybody will have a chance to look at it carefully and then start complaining to the leader about it.

There being no objection, the schedule was ordered to be printed in the RECORD, as follows:

PROPOSED LEGISLATIVE SCHEDULE JULY–AUGUST

WEEK OF JULY 10

Regulatory reform.

WEEK OF JULY 17

Regulatory reform through Tuesday.
Tuesday p.m.—Bosnia.
Wesnesday—Bosnia.
Thursday—Available Appropriations bills.
Friday—Available appropriations: Military Construction/Legislative/Energy and Water.

WEEK OF JULY 24

Monday—Ryan White bill/Gift lobbying bill.
Tuesday through Friday—Start State Department reorganization bill and Foreign Operations Authorization.
Saturday session if necessary.

WEEK OF JULY 31—AUGUST 4

DOD authorization and DOD appropriations.
Saturday session if necessary.

WEEK OF AUGUST 7[1]

Monday, begin welfare reform (or earlier if schedule permits).
Tuesday through Friday—Continue welfare reform and available appropriations bills or conference reports.
Saturday session possible to complete any items.

The PRESIDING OFFICER. In addition, the Chair would add the previous order will be so modified to reflect the 4 o'clock modification.

Mr. DOLE. With reference to the pending amendment, I will need to do some checking on that before I am in a position to respond to the Senator from Louisiana. In other words, the amendment pending would in effect take Superfund out of the——

Mr. JOHNSTON. That is right, environmental management activities, the whole section, just withdraw that.

Mr. DOLE. I assume there will be Superfund legislation this year, and so at that time we would address the issues that are removed from this bill.

Mr. JOHNSTON. I have heard from many of those Senators involved in the issue, all of whom are anxious to move forward with Superfund in their committee, and I think there is no hesitation in moving forward. I was told this morning that Senator SMITH, who chairs the subcommittee on Superfund, is anxious to move forward but did not want to vote on this; he would rather have it done by the majority leader by unanimous consent. That is the reason I asked for the majority leader's attention.

Mr. DOLE. Right. If I can just have a few minutes to clear that, I did not—we did discuss that this morning at our 8:30 meeting. We did discuss it briefly with the Senator from Louisiana. It is a very important provision. There are some of our colleagues who want to leave it as it is, others who have mixed feelings on it—in fact, some who would probably vote to remove it. The question is how many would vote to remove it. That is sort of the bottom line. If I could have a few moments to check with two or three people.

Mr. JOHNSTON. Madam President, I think it may be appropriate to temporarily lay this aside unless someone has any problem with it, and I think Senator BOXER is ready to move with her amendment under a time agreement. So is there any problem with temporarily laying this aside?

Madam President, I ask unanimous consent that we temporarily lay the pending amendment aside.

The PRESIDING OFFICER. Is there objection?

Mr. ROTH. Reserving the right to object——

Mr. DOLE. I would like to dispose of the pending amendment if the Senator will just give me a few moments.

Mr. JOHNSTON. I withdraw that request.

Mr. DOLE. And either have a quorum or if somebody wanted to speak on some other—does the Senator from California wish to speak on another matter?

Mr. GLENN. She has an amendment, but she could start speaking on it.

Mrs. BOXER. I am waiting to introduce an amendment on mammograms.

Mr. DOLE. The Senator could start speaking on that.

Mr. GLENN. The Senator could start with the agreement that when he gets an answer back, she would be willing to yield the floor for that disposition.

Mrs. BOXER. If the Senator will make that into a unanimous-consent request.

Mr. DOLE. Let me suggest that as soon as we dispose of the amendment offered by the Senator from Louisiana, the Senator from California be recognized to offer an amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOLE. The Senator can start speaking now.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized to begin speaking with the reservation that if the pending amendment is agreed to, we will then interrupt and do that, and then we will return to the Senator from California.

AMENDMENT NO. 1524

Mrs. BOXER. Madam President, thank you very much for that very explicit explanation of where we are in the process.

I want to thank my colleagues because I do think this is a very important amendment. It affects the women of this country and, of course, as a result of that, everyone in this country, because one of the tragedies that we face in America today is an epidemic of breast cancer. And the amendment that I will introduce at the appropriate time will merely say that a rule that is in process now which will set standards for mammograms will be able to move forward and not be subjected to this new bill.

Madam President, one in nine women are at risk of being diagnosed with breast cancer in her lifetime. Breast cancer is the most common form of cancer in American women and the leading killer of women between the ages 35 and 52.

In 1995, an estimated 182,000 new cases of breast cancer will be diagnosed, and 46,000 women will die of the disease. Just in the year 1995. We lost 50,000 brave men and women in the Vietnam war, and the country has suffered ever since in grief. Every year we lose 45,000 women, approximately, from breast cancer.

We do not know what causes breast cancer, although we are making progress on that front. We do not know how to prevent breast cancer, but the research that is moving forward hopefully will lead us in the right direction. We certainly do not have a cure for breast cancer, although, again, we are making progress. We do have, however, a couple of tools. Those are breast self-examination, doctor examination, and mammography. Those are the only tools that women have to detect breast cancer early, when it can be treated with the least disfigurement and when chances of survival are the highest.

What does that have to do with the amendment that I will be introducing? And I am very proud to say, Madam President, that this amendment is cosponsored by Senators MURRAY, MIKULSKI, LAUTENBERG, BRADLEY, FEINSTEIN, DORGAN, KENNEDY and REID. What does the tragic history of breast cancer have to do with the amendment that I am going to offer? It is directly related. The quality of a mammogram can mean the difference between life or death. If the mammogram procedure is done incorrectly, if a bad picture is taken, then a radiologist reading the x ray may miss seeing a potentially cancerous lump.

Conversely, a bad picture can show lumps where none exist and a woman will have to undergo the trauma of being told she may have a cancer, a situation known as a ''false positive.'' Now, truly, I do not know many women of my age, younger or older, who have not had the trauma of a false reading. It is very common.

[1] All items must be completed prior to the start of the August recess. As soon as these items are completed, regardless of the day, the Senate will begin the recess.

We need to perfect mammograms. But a false positive is obviously nothing compared to a radiologist missing a cancer. To get a good-quality mammogram, you need the right film and the proper equipment. To protect women undergoing the procedure, you need the correct radiation dose. So it is not a mystery. It is not a mystery as far as what we need to do to get better quality mammograms.

I am very proud to say that in 1992, Congress passed the Mammography Quality Standards Act in order to establish national quality standards for mammography facilities. Now, I want to make a point about that. In this Republican Congress we hear a lot of talk about how everything should be given to the States. Why do we need national standards for this? Why should we have national standards for that?

Well, let me tell you honestly, I have never been at a community meeting in my life—and I have been in public life for a very long time—where someone has come up to me and said, ''Senator, you are doing too much to protect the food supply. You are doing too much to protect the water. You are doing too much to make sure that mammography is safe.'' On the contrary, it is, ''Senator, I am worried about the safety of the water I drink. I am worried about the safety of the food that we eat. I am concerned about pesticide use, bacteria. What are you going to do to make it better?''

And clearly, when a woman is misdiagnosed and a doctor misses the cancer because of a mammogram that was either improperly done or improperly read—we hear it all the time. And we all know cases where a cancer that could have been detected early was not detected because the quality of the mammogram or the quality of the reading simply was not high enough.

So we passed the Mammography Quality Standards Act in order to establish national quality standards for mammography facilities. At the time, both the GAO and the American College of Radiology testified before Congress that the former patchwork of Federal, State and private standards were inadequate—inadequate—to protect women. So we are not talking about something here that was not studied. The GAO and the American College of Radiology testified before Congress that the patchwork that existed before this act, the Mammography Quality Standards Act, was inadequate. It was inadequate to protect women.

There were a number of problems at mammography facilities: poor-quality equipment, poorly trained technicians and physicians, a lack of regular inspections, and facilities which told women they were accredited when, in fact, they were not accredited. And women walked in for their mammograms. And every woman who had this experience can say that you hold your breath until you get the results. And many women breathed a sigh of relief and said they were cancer free, when in fact they were not cancer free because of the inadequate facilities.

If this regulatory reform bill passes, the final rule that implements the mammography act that we passed could be delayed for years. Let me repeat that. And I hope my friend from Louisiana hears it and I hope the majority leader hears it. And this is not coming from one Senator; it is coming from the people who know. The FDA says to us clearly that if this regulatory reform passes as it is, the final rule implementing the Mammography Quality Standards Act, which is due out in October, could be delayed for years.

My friends, we cannot let this happen. Under the interim rules, the FDA has already certified over 9,000 facilities as providing quality mammography services. If final rules are delayed, then women will no longer be able to rely on the good standards we have put in place.

And that is why the amendment that I am introducing with many of my colleagues and my primary coauthors, Senator MURRAY from Washington—and I look forward to her statement following mine—the amendment simply says that the Mammography Quality Standards Act is not a major rule and is therefore exempt from the requirements in the regulatory reform bill, period.

Anyone who gets up here and says, ''You don't need the Boxer-Murray-Mikulski legislation, we cover it,'' I will look that person in the eye and tell them they are playing Russian roulette with the women of this country, because the FDA has told us we need this Boxer-Murray amendment in order to make sure that this rule moves forward.

So any Senator who stands up and starts questioning this Senator about it is going to have to hear it repeated over and over and over again, as many times as it takes. We jeopardize the health of the women of America if we do not adopt this amendment.

Some are going to say the Mammography Quality Standards Act does not meet the $100 million threshold established by the bill for major rules and, therefore, it would not be affected and we do not need the Boxer-Murray amendment. FDA believes otherwise, and I would rather believe them than some Senator who does not know this issue.

We know already the cost of this rule is about $98 million, dangerously close to the $100 million threshold. With inflation and somebody jacking around the numbers, it could easily go to $100 million. Some may argue that there are health and safety exemptions in the cost-benefit analysis and risk assessment portions of the bill to protect the Mammography Quality Standards Act. In fact, those exemptions apply only when it is ''likely to result in significant harm to the public.''

The FDA does not believe this exemption would include the mammography quality standards. Moreover, since the bill does not define the term ''significant harm,'' how can we tell if it would apply or not? If a woman has her mammogram read by someone who is poorly trained in mammography, is it of significant harm to the public if she dies? It is certainly significant to that woman if that person fails to detect a cancerous lump, and to her children and to her family. And if it happened to a Senator's wife, it sure would be significant and they would be rushing to the floor to exempt this rule.

I say it is significant. This is such a significant subject—breast cancer—that we should make sure we are doing the right thing and exempt this rule.

Let us concentrate on what we do know. Mammography is the only test we have to detect breast cancer early when survival rates are the highest. We know not enough women, especially older women, have this test. That is why there has been extensive public information campaigns encouraging women to get the test, and, therefore, when they do get the test, we need to know that the mammogram they are getting is accurate and that the person who is reading the mammogram understands how to read the mammogram, and that is why we need this rule, to move forward, and that is why we need the Boxer-Murray-Mikulski amendment.

It is straightforward. It says that quality mammography is so important that we should not do anything to prevent the FDA from moving forward and continue to implement the Mammography Quality Standards Act. I certainly hope we will have broad support for this amendment when I do offer it.

Mr. President, I ask unanimous consent that Senator BUMPERS be added as a cosponsor of the amendment.

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered.

Mrs. BOXER. As I understand the agreement, I was entitled to speak until there was an interruption. I ask unanimous consent that Senator MURRAY be allowed to make her comments now, with the understanding that if there is, in fact, an interruption regarding the Superfund amendment, we will lay this matter aside and come back to it immediately following it.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington is recognized.

Mrs. MURRAY. Thank you, Mr. President. I thank my colleague from California, Senator BOXER, for this amendment and for her very well-stated words on this issue. I hope that all of our colleagues took the time to listen to what she had to say. She stated it very clearly for all of us why we need this amendment to exempt the Mammography Quality Standards Act regulations from the requirements of S. 343.

I think we all know that breast cancer has taken the lives of far too many women, and the long list of those who have died include many of my own friends. I am sure everyone on this

floor knows of someone who has been touched by breast cancer. It is a growing health concern and problem in this Nation, and it is a great threat to women's health. It is estimated that during the 1990's, nearly 2 million women will be diagnosed with breast cancer and 460,000 women will die from this deadly disease. I assure everyone listening that will include people you know—your sisters, your mothers, your daughters, your friends.

In 1992, Congress understood that and they passed the Mammography Quality Standards Act. The FDA is responsible for issuing regulations under that act to ensure that medical procedures for mammography exams are safe and effective and that mammograms are properly administered and interpreted.

Most of the regulations implementing the Mammography Quality Standards Act are due to be released October of this year. The regulations the FDA hopes to implement will set standards, as the Senator from California has said, for x ray film quality, requirements for staff, for reading and interpreting those x rays, and standards for recordkeeping. Those regulations will ensure that mammograms are done correctly and safely so that we can increase the chances of early detection.

Under the Dole bill, implementation of these quality controls in mammography will qualify as a major rule, either because they may cost $100 million to implement or because they may cause a significant impact on a substantial number of small entities. They will then be subject to the cumbersome, expensive and lengthy cost-benefit analyses and risk-assessment process.

At a time in this Nation when women are already confused by the mixed messages we receive about breast cancer and other diseases affecting us, I believe this bill sends yet another disturbing message: That Congress will demand that the FDA choose the lowest-cost alternative by placing a dollar value on a woman's life.

We cannot let that happen. The potential positive effects of these regulations on the lives of women in this country are substantial. Improving the quality of mammography translates directly into early detection of breast cancer. Early detection of breast cancer increases the likelihood of successful treatment and survival. Delay in issuance of these regulations will cost women's lives.

Mr. President, my colleague from Illinois, Senator SIMON, summed up a simple and important message that is being lost in this debate on regulatory reform. He said what we need in this field is some balance, and I could not agree more. The American people want their elected officials to reduce wasteful and unnecessary spending and make their Government work efficiently. They want a balanced approach to decisionmaking about regulations. They do not want costs to be either the only or primary reason for a regulation. They want us to manage their tax dollars prudently, while also protecting their health and their environment.

The amendment before us on mammography takes a step toward protecting their health. I hope that I can support eventually a comprehensive bill that provides true Government efficiency and rational decisionmaking. Unfortunately, S. 343 as now drafted does not do this.

I urge my colleagues to look carefully at the amendment before us and to support it. I can assure all of you that women across this Nation are disturbed by the mixed messages they have received about mammographies over the last few years. One day we are told if you are over 40, have one every 5 years. Then we are told, if you are over 50, have one every year. Then we are told you do not need to have one until you are a certain age.

Those messages are disturbing because they will cause women not to have mammograms. And when we go in to have one, we want to know that it is safe, effective, and we can be assured of that.

This amendment will assure that this bill will not undo the important progress that we have made on this issue in the past several years. I strongly urge all of my colleagues to accept this amendment so that we can move to a better bill.

Thank you. I yield the floor.

Mrs. BOXER. Mr. President, at this time, I would rather withhold the rest of my debate until I get to lay down the amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that coauthors be added to the pending Baucus amendment as follows: Senators JOHNSTON, LAUTENBERG, BRADLEY, MURRAY, FEINSTEIN, REID, MOYNIHAN, GLENN, and KENNEDY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, we were discussing the proposal by the Senator from California, Senator BOXER. I wanted to rise in support of the concerns she has expressed here. I think they are very valid. Yesterday, when we were talking about different areas that would be affected if we did not change the April 1 deadline, mammography was one of those things that would be affected and would have the potential of being delayed for almost an indefinite period, if they were forced to go back and start the same risk assessment, the same analysis program, all over again.

Some of the pending rules that would be affected we listed yesterday, such as lead soldering, iron toxicity, a whole list of those. One was mammography. Let me read from a little summary of why we are concerned about this.

The Mammography Quality Standards Act of 1992, MQSA, requires the establishment of quality standards for mammography clinics covering quality of films produced, training for clinic personnel, recordkeeping, and equipment. MQSA resulted from concerns about the quality of mammography services that women rely upon for early detection of breast cancer. FDA is planning to publish proposed regulations to implement the MQSA.

The potential magnitude of these regulations is substantial, and that is what the distinguished Senator from California has been addressing.

Improving the quality of mammography translates directly into early detection of breast cancer, and early detection of breast cancer increases the likelihood of successful treatment and survival. An intramural was published December 21, 1993. This publication of proposed regulations—in other words, follow-on—is planned for October 1995, but it would not be exempt since that occurs after the April 1 cutoff time period that is in the legislation now. So that would mean that under S. 343 the whole process would probably be started all over again.

That is why I do not think we want to see that happen. I do not think we want to see the standards delayed unnecessarily and set back the rules and regulations and place untold thousands of women in additional danger.

I certainly rise to support the proposal made by the distinguished Senator from California.

In addition to that, I do not believe that the letter from the Secretary of the Department of Health and Human Services was entered into the RECORD. I ask unanimous consent that the letter from Secretary Shalala, dated July 12, addressed to the minority leader, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Washington, DC, July 12, 1995.

Hon. THOMAS A. DASCHLE,
Democratic Leader,
U.S. Senate,
Washington, DC.

DEAR SENATOR DASCHLE: It is estimated that 46,000 women die every year from breast cancer. It is the second leading cause of cancer death in women. Early and accurate detection can save thousands of lives.

The Mammography Quality Standards Act (MQSA) of 1992, enacted on October 22, 1992,

established quality standards for mammography. MQSA resulted from concerns about breast cancer and the quality of mammography services upon which women rely for early detection of breast cancer. The purpose of MQSA is to ensure all mammography done in this country is safe and reliable.

We have completed the first phase of this program. To complete implementation, we must issue final rules that will establish the full range of standards necessary for a national quality assurance program. These rules have been developed through extensive cooperation with the National Mammography Quality Assurance Committee, including five public meetings. The rules are scheduled to be proposed in October.

This proposal will include a number of the standards required under the statute, such as guidelines for radiologic equipment, consumer protection provisions, and breast implant imaging.

Improving the quality of mammography translates directly into earlier detection of breast cancer, which increases the likelihood of successful treatment and survival. Delay in implementation of the final rule due to the unnecessary and duplicative requirements that would be imposed by S. 343 will delay significant improvements in this life saving program. I urge you to ensure that the MQSA final rule be allowed to proceed without delay.

Sincerely,

DONNA E. SHALALA.

Mr. GLENN. She points out some 46,000 women die every year from breast cancer. It is the second leading cause of death in women, and thousands of lives can be saved if we go ahead and get the standards out, get going with these things, set standards for mammography, x rays, and all the other things that go into this.

The Mammography Quality Standards Act, enacted back in 1992, established some of these standards. The purpose of MQSA was to ensure that all the mammography that is done is safe and reliable, it does not cause more problems than it is trying to cure.

The first phase of all this program has been completed. To complete implementation we need the final rules, still, that will establish the full range of standards necessary for a national quality assurance program.

There has been extensive cooperation with the committee that is dealing with this, the National Mammography Quality Assurance Committee, five public meetings and a lot of witnesses, and the rules are scheduled to be proposed in October of this year.

The proposal will include a number of the standards required under the statutes, such as guidelines for radiologic equipment, consumer protection provisions, and breast implant imaging. Improving the quality of mammography translates directly into earlier detection and the likelihood of successful treatment and survival.

The delay in implementation of this final rule, due to the unnecessary and duplicative requirements that would be imposed by S. 343, because this does not meet the April 1, 1995, cutoff, will delay significant improvements in this life-saving program. So the Secretary urges the Senate to ensure that the MQSA final rule be allowed to proceed without delay. That is what the Senator from California does. That is the reason I rise to speak on behalf of her proposal.

PRIVILEGE OF THE FLOOR

Mr. GLENN. Mr. President, I ask unanimous consent that Lisa Haage be permitted privilege of the floor during consideration of S. 343.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 1517

Mr. BAUCUS. Mr. President, I would like to speak in favor of the pending amendment. This amendment is a very simple amendment.

Essentially, it is to delete section 628 of the bill, that section now currently in the bill that makes specific changes to Superfund and other hazardous waste cleanup. Simply put, changes to Superfund, I believe, do not belong in this bill. It is as simple as that. This regulatory reform bill was considered earlier in the House, and in earlier versions, this section was not in the bill. Somehow, somebody later added in this section, section 628.

What does it do? Essentially, it says that all the Superfund provisions now also apply to regulatory reform.

I do not think that makes sense. That is a substantive change to a regulatory reform law. Much worse, Mr. President, in doing so—that is, including Superfund in regulatory reform—the net result is we would have a present bad situation made much worse.

Let me explain. If section 628 is enacted, that is, the provision in the bill which includes Superfund to the new cost-benefit and risk assessment provisions in regulatory reform, the Superfund program that currently exists in our country becomes much more complicated, not less.

All across the country hundreds of hazardous waste cleanups would be disrupted. They would be delayed. In some cases, they would be halted. If we can believe it, section 628 would actually make the present very complicated, very unfortunate and very disrupted Superfund program even slower, even more complicated, and much more bureaucratic than it already is.

I am reminded of the late sage of Baltimore, H.L. Mencken. He once said, for every complicated, complex problem there is a simple solution. It is easy. But it is usually wrong.

I cannot think of a better example of that statement of his. That is, Superfund reforms are very complicated problems. What is the simplest solution presented in this bill? It includes Superfund reform in regulatory reform. Simple—and it is wrong.

I do not want any person to misunderstand. Those that want to delete section 628 are not defending the status quo. We are not defending the present Superfund program. Far from it. The Superfund has plenty of problems. It must be corrected.

Let me remind my colleagues that Superfund was a hastily drafted law back in 1979. It was an immediate response to Love Canal. Like most hastily drafted laws, it does not work very well. It was not thought through. Therefore, it is inefficient, ineffective, and many too few cleanups and too many lawsuits.

There are currently 1,300 cleanup sites—roughly 40,000, but EPA says 1,300—down from 40,000 to 1,300. Mr. President, 15 years into the program, out of that 1,300 Superfund sites in our country—that is, cleanup of toxic waste—only 278 have been cleaned up. Mr. President, 15 years, out of 1,300, only 278 have been cleaned up. If we continue at this rate, we will finish the job by the year 2040. I might add, just in time for my 108th birthday.

Unfortunately, the program is slowing down, the present Superfund program. It is not speeding up, it is slowing down. It now takes almost 10 years to clean up an average site, and the cost is roughly $30 million per site, and about 30 percent of the money is spent not in cleanup costs but rather on litigation. When as much as 30 cents to the dollar goes to lawyers, Mr. President, I think we all think something is wrong with the program.

I bet that every Senator has his or her own frustrating personal experience with the Superfund—a site where studies have piled up for years, where delay has dragged on, where lawyers and accountants have made money hand over fist, and the local community is left holding the bag, and where people have become angry. They want, Mr. President, sites to be cleaned up so they can get on with their lives.

There are several steps that we should take to improve Superfund. First, we should establish an allocation system to fairly distribute the cost of cleanups among responsible parties. Current law does not do that.

We should reform the liability system so that small businesses and municipalities are not dragged into burdensome lawsuits.

We should improve cleanup standards and take better account of science, economics, and future land use.

And we should increase community involvement in the cleanup process. Right now, the communities are not involved enough in the early stage of Superfund. If they were, the program could work better because the local folks could say we want this site cleaned up to a higher standard for playground use but this other site cleaned up to a lower standard for industrial use. The communities, the local people, have a much better idea what that remedy selection should be.

There are other changes we should make to the program.

Each of the steps is a bit complex. Each requires tradeoffs. Each should be taken carefully. But each step is necessary.

This is why Superfund reform is a top priority of the Environment and Public Works Committee. Last year, the committee reported a bill that overhauled

Superfund from top to bottom, and this year the committee has had seven hearings, and the subcommittee chairman, Senator SMITH from New Hampshire, has proposed a sweeping set of reforms and plans to hold a markup very soon.

So the difficult work of rolling up your sleeves and getting the job done of reforming Superfund is well underway and is being undertaken the right way.

Unfortunately, section 628 does not advance the cause of reform. It sets it back. It takes us in the wrong direction. In a nutshell, section 628 subjects any Superfund cleanup or other so-called environmental management activity that costs $10 million or more to the risk assessment and cost-benefit provisions of the bill. That sounds pretty straightforward. But consider two points.

First, this would apply a different standard for risk assessment and cost-benefit analysis than exists under current law. So, all of the risk assessment, remedial investigations, feasibility studies and other analysis, and all that bureaucratic gobbledygook that has been done under current law is out the window. Go back to the beginning, this section says. Do it all over again.

Second, the new standard applies to hundreds of sites, including many sites where cleanup decisions have already been made and even sites where construction work has already begun.

Let me give an example. In my State of Montana we have the largest Superfund site in America, the Clark Fork River, the result of hundreds of years of large-scale copper mining. It stretches 120 miles from Butte, MT, to Missoula. It has 23 priority sites. Only two are cleaned up.

We have been working for years to get EPA to stop studying and start cleaning up. The studies have cost more than $50 million and now, after years of talk, we have a plan that is finally ready to go. EPA, the State of Montana, the people of Butte, and the responsible company, have agreed on innovative, cost-effective solutions at several spots along the Clark Fork River.

In Butte, for example, rather than remove lead contamination from the soil everywhere, it will only be removed at priority sites, where children live and play. And to make sure that children remain safe under the plan, they will be monitored. This solution makes sense. It is the most sensible way to do the job, and the citizens are anxious to get started. But this bill stops all that dead in its tracks. Montana's Governor, Marc Racicot, wrote me last Friday with this comment.

If it was necessary to undertake the kind of cost-benefit analysis and risk assessment called for in the bill for these response actions, given how long it would take to do this, the clean-up of these sites, if such clean-up occurred at all, would not occur until well into the 21st century.

This is all the sillier when one considers that EPA routinely prepares risk assessments and undertakes a form of cost-benefit analysis when it makes a decision.

So the cleanup at the Clark Fork will grind to a halt. The cleanup will stop until yet another study is completed. The families and children of Butte, Anaconda, Deer Lodge, Bonner, Lolo, Missoula, and all the other towns on the river that live with pollution, fish kills, and threats to drinking water for years longer will have to suffer. And if the cleanup standard established after these new studies is too low, the damage will be magnified. And all to no purpose, because the EPA has already done the work.

Let me give another example: The streamside tailings along Silver Bow Creek. Here, the State has just completed a detailed study of seven different options for cleaning it up and the people in the community have thought it through. Among other things, they will turn part of the site into a ''greenway'' with bike trails and hiking trails and picnic areas. But only one of the seven options is less than $10 million, the threshold under the bill, and that is the option of doing absolutely nothing. So any decision to clean up the site, even minimally, will require new cost-benefit studies to be repeated. Once again, the community's plan gets delayed and maybe even gets thrown out the window.

Jack Lynch, the chief executive of Butte-Silver Bow County, wrote me to express concern about another cleanup—Berkeley Pit. The pit is an open copper mine just outside of Butte, abandoned when the Anaconda Co. left town in the early 1980's. Mr. President, I wish you could see this abandoned pit. It is about a mile and a half wide. Every day it is filling up with about 6 million gallons of what you can loosely call water. In fact, it is a liquid so acidic it might burn your eyes out if you attempted to use it to wash your face. The water is so deep now, you can even see waves on a windy day, and if it is not stopped, it will threaten Butte's ground water. Despite these problems, the bill, the one pending before us, would force the people of Butte to endure more studies and more delay.

I can tell you, the people of Butte are up to their necks in studies. They would rather have something done.

Mr. President, I ask unanimous consent the letters from Governor Racicot and Chief Executive Lynch be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF THE GOVERNOR,
STATE OF MONTANA,
Helena, MT, July 7, 1995.

Hon. MAX BAUCUS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BAUCUS: I write to express concern over certain aspects of the Comprehensive Regulatory Reform Act of 1995, as introduced on June 21, 1995. In short, I am deeply concerned that the bill, if enacted into law, would frustrate response actions and restoration of the Upper Clark Fork River Basin NPL sites.

In order to explain the basis for my concern, a brief discussion of my understanding of the bill follows: Section 628 of the bill imposes requirements for major environmental management activities. The bill defines these activities to include response actions and damage assessments costing more than 10 million dollars pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act. Such activities must meet ''decisional criteria'' established under §624 of the bill. In order to ensure that the decisional criteria are met, an agency must prepare a cost-benefit analysis and risk assessment (the requirements for which are set forth in Subchapters II and III of the bill) for all such activities pending on the date of enactment of the bill or proposed after such date. However, the bill appears to give an agency some discretion for actions that are pending on the date of enactment or proposed within a year of such date. For these actions a cost-benefit analysis or risk assessment under Subchapters II and III need not be prepared, but an agency can use alternative analyses in order to determine that the decisional criteria are met. For all risk assessments prepared by an agency, even a non-Subchapter III risk assessment, §623 allows an interested person to petition an agency to prepare a revised risk assessment and then allows for judicial review of the agency's decision.

The decisional criteria of §623 envision two scenarios. The first scenario mandates that an agency determine 1) that the action's benefits justify its costs, 2) that the action employ ''flexible'' alternatives ''to the extent practicable,'' 3) that the action adopts the least cost alternative that ''achieves the objectives of the statute,'' and 4) that the action, if a risk assessment is required, ''significantly reduce risks'' or if such a finding can not be made, that the action is nonetheless justified and is ''consistent'' with Subchapter III (which sets forth requirements and standards for risk assessments). The second scenario is when an agency cannot make a finding that an action's benefits justify its costs. In this case, an action must meet all the other criteria identified above and an agency must prepare and submit to Congress a written explanation of its decision.

Section 624 specifically states that its requirements ''shall supplement and not supersede any other decisional criteria. . . .'' Section 628, regarding major environmental management activities contains this same statement.

As you are aware, EPA and the State of Montana are presently engaged in a cooperative effort to determine and implement appropriate response actions to address adverse impacts to human health and the environment at the Upper Clark Fork Basin NPL sites. As you are also aware, response actions have been completed, are ongoing, have been proposed, and are in the RI/FS developmental stage.

It is important to note that §628 would apply to virtually all response actions, even ongoing response actions. Section 628 applies to ongoing response actions unless ''construction or other remediation activity has commenced on a significant portion of the activity'' and it is ''more cost-effective to complete the work'' than to undertake the analysis called for by §628 or the delays caused by undertaking the analysis will ''result in significant risk to human health or the environment.'' This exclusion is so narrowly drawn that almost all response actions, including ongoing response actions at the Clark Fork sites, would be subject to the requirements of §628.

For a pending action, which presumably means either an ongoing response action or a response action for which there is a ROD, or

for a response action that is proposed within a year after the bill's enactment, which presumably means a proposed plan on a ROD, an agency apparently does not have to prepare a risk assessment or a cost-benefit analysis pursuant to the requirements of the bill. Rather, an agency may use alternative methodologies to make such a determination.

Thus, at a minimum, the requirement to prepare a cost-benefit analysis and risk assessment will apply to actions proposed more than a year after enactment. If enacted in this session, the bill would likely impose these requirements for several response actions. For example, the response actions for the Clark Fork River and Anaconda Regional Water and Waste are some years away. If it was necessary to undertake the kind of cost-benefit analysis and risk assessment called for in the bill for these response actions, given how long it would take to do this, the clean-up of these sites, if such clean-up occurred at all, would not occur until well into the 21st century.

This is all the sillier when one considers that EPA routinely prepares risk assessments and undertakes a form of cost-benefit analysis when it makes a decision. The bill, however, would require preparation of its highly particularized form of these two analyses, while imposing an entirely new layer of what can only be termed ''bureaucratic requirements'' for the performance of these tasks. The end result would be to make the performance of risk assessments and cost-benefit analyses much more onerous than what EPA presently does.

Another problem with the bill concerns it provisions for petitions to revise risk assessments. Thus, non-Subchapter III risk assessments that accompany response actions can be, and will be, challenged. Allowance for judicial review will then cause the particular response action to remain in a holding pattern while the sufficiency of the risk assessment is litigated. The end result will be more lawyers and delay.

Regardless of whether a strict cost-benefit analysis or risk assessment has to be prepared, all response actions (except those falling within the narrow significant commencement of construction exclusion) must meet the decisional criteria of §624. Thus, ongoing response actions, response actions for which there is already a ROD, and proposed ROD's will have to retrace their steps and reopen their proceedings in order to make the findings required by this section. And all this after an extensive administrative process, with input from the potentially responsible parties and the public. The lack of finality, which this bill condones and even promotes, results in inefficiencies and, of course, prevents a timely clean-up. I do not believe that such a process constitutes an improvement over the present statutory and regulatory scheme.

Then there is the question of the nature of the criteria. The bill states that the criteria do not supersede but only supplement any other decisional criteria provided by law. This may be a distinction without a difference. The decisional criteria mandate specific findings. Thus, they supplement and supersede the cleanup standards of §121 of CERCLA. In any event, and notwithstanding the provisions of §121, it is clear that the response action must meet the decisional criteria of §624.

The decisional criteria are not without problems, however. For example, when do benefits justify costs? Put another way, is justification synonymous with benefits > costs? Leaving aside definitional problems, which will lead to much litigation, discourage settlements and cooperation between the PRP and EPA, and put cleanups on a slow track, such a requirement is unnecessary. When EPA undertakes a response action it has made a determination that based on the statutory standards, which include that EPA consider costs, the societal benefits from that action justify undertaking it. This is nothing more than a cost-benefit analysis.

Another of the decisional criteria requires that the least cost alternative that achieves the objectives of the statute be selected. This criteria is also highly problematic. For example, two alternative response actions exist at a particular site. One is less expensive than the other but does not protect public health and the environment to the degree that the more expensive alternative does. Accordingly, both alternatives accomplish, but to varying degrees, the objectives of CERCLA. Under this criteria, however, the lower cost alternative would have to be selected, even if the other alternative was slightly more expensive but significantly more protective of public health and the environment. This is nonsensical.

The consequences on the Upper Clark Fork Basin NPL sites from the bill would be drastic. To the extent EPA is required to perform the risk assessments and cost-benefit analyses as set forth in the bill, cleanup actions would be delayed for years. Any risk assessment by EPA could also be challenged in petition proceeding. Timely cleanup will also be frustrated by the decisional criteria. PRPs, will utilize the vagueness and uncertainty associated with the criteria as leverage.

Thus, PRPs will be unwilling to enter into consent decrees and more willing to take their chances in court armed with the criteria. This will cause fewer settlements of actions. It will also, of course, create pressure on EPA to settle for less. Similarly, even if EPA is unwilling to settle on the terms of the PRPs, EPA will have to take into account the risk that its action may not be upheld if challenged. Accordingly, EPA will seek less in its remedy than it would otherwise. As a consequence, the cleanup of the Upper Clark Fork Basin NPL sites both in terms of its timeliness and its completeness will be jeopardized. Given the impacts to public health and the environment in this area, and the degree to which it will likely not be possible to fully remediate these impacts, any lessening of cleanup will be significant indeed.

* * * * *

The bill also presents a significant threat to the State of Montana's natural resource damage litigation and concomitantly the obligation of the State acting as trustee on behalf of its citizens to redress injuries to natural resources and make the public whole.

Major environmental management activities are also defined to include ''damage assessments.'' There is only one form of damage assessment under CERCLA and that is a natural resource damage assessment. Accordingly, it is clear that the bill is attempting to bring within its scope actions related to natural resource damage recovery. It is not entirely clear that the bill is successful in this regard because the bill imposes its requirements on ''agencies.'' Under CERCLA, however, natural resource damages are recovered on behalf of trustees. Notwithstanding the use of the term ''agency,'' it is likely that the bill would be read to impose its requirements on trustees given its clear intent to reach recoveries of natural resource damages.

Thus, the State of Montana, in the pursuit of its natural resource damage case, would be bound by the same requirements as EPA for response actions. Restoration actions have not commenced so the State's natural resource damage assessment and restoration plan would be subject to the bill.

There are two principal problems. First, the bill would necessitate that the State's assessment and restoration plan be revised to meet the new requirements. This would present a real problem for the State since the litigation is proceeding forward. To revise the State's assessment would bring the litigation to a screeching halt, undo much work that has already been done, and would extend the litigation and administrative process on which the litigation depends for years. It would also cost the State hundreds of thousands of dollars to comply with the bill's requirements.

More fundamentally, however, the bill seems to eliminate the possibility of the State recovering restoration costs. In the State's restoration plan various alternatives were identified that would ''restore'' the resource. The plan acknowledged that given the severity of the injury, actions could not be performed that resulted in immediate or near-term restoration, but felt that this fact should not act to disable the State from taking actions that mitigated injury and so hastened—somewhat—the eventual full recovery of the resource. The plan further acknowledged that in the end resources would be restored as a result of natural recovery. As noted, various alternatives were proposed that to varying degrees mitigated injury. One alternative that was always considered was the alternative of natural recovery. This alternative will result in the restoration of resources in the Upper Clark Fork Basin; however, restoration will not occur for thousands or tens of thousands of years. Since the purpose of the natural resource damage provions of CERCLA is restoration and since natural recovery will accomplish restoration and will almost always be the least cost alternative considered, the bill's decisional criteria would mandate the selection of this alternative notwithstanding any other considerations.

Please object to the provisions of the Regulatory Reform Act that would be harmful to the interests of the State of Montana.

Sincerely,

MARC RACICOT,
Governor.

BUTTE-SILVER BOW,
COURTHOUSE,
Butte, MT, June 28, 1995.

Senator MAX BAUCUS,
U.S. Senate,
Washington, DC.

DEAR SENATOR MAX BAUCUS: I am writing today to express my concerns about certain provisions of the Regulatory Reform Bill. While I surely understand the need for reform, and I applaud the Senate for taking a leadership role in the development of sound reform policy, I have serious reservations that the provisions related to new cost-benefit analyses for Superfund sites will damage and delay ongoing clean-up efforts in Butte and sites along the Clark Fork River.

I can understand how a thorough cost-benefit analysis would be useful for a new site or sites that are early in the process of investigation. However, in Butte, we are well down the road in the decision-making process for several ''operable units'' within the four NPL sites. There are Records of Decision and various Decrees for several sites, such as the Berkeley Pit/Mine Flooding area, the Montana Pole Treatment Plant, the Lead Poisoning Prevention Program, the Priority Soils Area, Lower Area One/Colorado Tailings, and most recently, the Streamside Tailings along Silver Bow Creek. The prospects of stopping this progress to conduct additional cost-benefit analyses (as per the draft provisions of the legislation, Sections 624 and 628) would be damaging.

I can assure you that, in Butte, cost has been a significant factor in the decision-making process. In our efforts to work with the regulatory agencies and the PRP's in our area, we have developed a very practical view of the balance between clean up and resources expended. We have worked hard to incorporate and substantially address cost considerations in the remedy selection process.

Senator, I would ask that you ensure that any new legislation designed to provide regulatory reform does not, in the process, slow down the work already in progress where significant decisions have been made. If you would like additional information, please do not hesitate to contact me.

Sincerely,

JACK LYNCH,
Chief Executive.

Mr. BAUCUS. Section 628, the section I think should be deleted, clearly causes big problems for the State of Montana. But not just the State of Montana. In fact, my best estimate is the provision affects at least 650 Superfund sites across the country. That is virtually every State. Let me give the numbers.

Today, studies are underway at 263 Superfund sites. Remedies costing more than $10 million have been selected at 285 sites. And cleanup is underway at 430 sites. We do not know how many of these 430 exceed the $10 million threshold, but the average cleanup cost is $30 million. So, obviously, most exceed the threshold. So a conservative estimate is that half of the 430 sites exceed the threshold.

This chart at my left illustrates what would happen to these sites under this bill. Consider the 285 sites where a remedy has already been selected. At each site there has been extensive study, public involvement, and negotiation. After years, people have finally agreed about how to clean up the site.

Let me refer to the chart more fully. Now, as I said, there are about 263 of the sites where study is underway, in red. The yellow shows there are 285 sites where the remedy has been selected. And the green shows there are 430 where there is ongoing cleanup. That is the current situation.

If S. 343 passes, including the section which we want deleted, what will the result be? The result would be twice as many studies. And it will mean—as the chart shows, only half as many sites will be cleaned up. That is a conservative estimate of the consequences of this bill. These sites will get thrown back for further study, which could take years.

Consider the 430 sites where there is an ongoing cleanup. Those sites also get thrown back into further study, unless we can prove the construction has commenced on a ''significant portion of the activity,'' whatever that means, and if other criteria are met.

So putting all this together, the impact of section 628 is very simple. The number of studies will double and the number of Superfund cleanups will be cut in half. This chart shows it. The red is the number of studies which will double. The green shows cleanups which will be cut in half.

I will say that once more. The number of studies will double and the number of cleanups are cut in half. A lot more redtape. A lot less cleanup. I do not I think that is what we want to do.

All across America people will wake up and discover that the purported regulatory reform bill has a very surprising effect. They will discover that virtually with no notice whatsoever, Congress has stopped Superfund cleanups dead in their tracks, and the residents of frustrated and exhausted communities will discover to their amazement that Congress has decided that Superfund sites need more study, more analysis, and more talk before a single shovelful of dirt can be moved or a single thimbleful of groundwater could be pumped.

Before concluding, I would like to repeat a point I made earlier. I am not defending the status quo. Superfund needs to be reformed. And some of the needed reforms may well relate to risk assessment and cost-benefit analysis. The Environmental and Public Works Committee reform efforts are well underway. But the issues are complex, they are controversial, and we cannot reform Superfund overnight.

Ironically, the bill repeats the same mistakes that the original drafters of Superfund made in 1980; that is, it is a hasty overreaction. It is a quick fix. It will cause a lot more problems than it would solve. But it is likely to have a very harsh consequence as well for the people who want their neighborhoods cleaned up and have already suffered enough.

H.L. Mencken must be smiling as he looks down on us from heaven today. We are addressing a complex, difficult issue and we are considering a simple, straightforward, easy solution that is dead wrong.

It is for these reasons I urge my colleagues to support my amendment and strike this provision from the bill.

Several Senators addressed the Chair.

Mr. GLENN. Mr. President, parliamentary inquiry: Earlier on we were waiting for a reply to a proposal by Senator JOHNSTON on the Superfund withdrawal bill. The majority leader indicated that he would check on his side and get back to us. I believe it was agreed—correct me if I am not correct—that the Senator from California, Senator BOXER, was to be recognized to speak on her amendment with the idea that, if the majority leader came back, we would then complete action on the Johnston proposal after which time she would be permitted to continue.

Is that correct?

The PRESIDING OFFICER. The agreement provided that once the Johnston amendment is disposed of, the Senator from California may offer her amendment.

Mr. GLENN. Yes. We were getting in a little time situation here where the Senator from New Jersey was going to speak I believe on a similar subject. I wanted to make sure everybody was aware of what the parliamentary situation was in case the majority leader comes back to the floor and we finish the work on the Johnston amendment.

Mr. LAUTENBERG. I want to be sure. I intend to speak on the Superfund amendment, though I support the amendment by the Senator from California. And I assume that, once having that recognition from the floor, I will be able to continue my remarks.

Mr. HATCH. Will the Senator yield for a parliamentary inquiry?

Mr. LAUTENBERG. Yes.

Mr. HATCH. I thank my colleague.

Mr. President, as I understand it—correct me, if I am wrong—as soon as the Superfund amendment is disposed of one way or the other then anybody can call up an amendment. Or is it by unanimous consent that the Senator from California would have the right to call up her amendment?

The PRESIDING OFFICER. The agreement provided that the Senator from California would have the right to call up her amendment.

The Chair previously recognized the Senator from New Jersey.

The Senator from New Jersey.

Mr. LAUTENBERG. The Senator from New Jersey would be happy with a unanimous-consent agreement to yield to the Senator from Montana to permit him to make his inquiry and to conduct such business as he would like.

Mr. BAUCUS. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank my colleagues for clearing the agenda.

Mr. President, I want to take this opportunity to talk about the section 628 of the pending regulatory reform bill. I am delighted to cosponsor this amendment. It deals with environmental cleanup.

As the former chairman and current ranking member of the Environment and Public Works Committee with the jurisdiction over Superfund, I believe that adoption of this amendment is critical to achieving real reform in the program. Let me begin by explaining it.

The language sought to strike has nothing to do with reforming the regulatory process. It has everything to do with undermining and invalidating specific regulations. It does not allow the reform regulatory process to work. Rather, it is an effort to mandate an outcome of that process.

The Superfund provision in the Dole-Johnston substitute makes an exception to the general rules established in the bill so that efforts to regulate Superfund sites—and only Superfund sites—are to be treated differently

than all other regulatory actions. As we know, the bill currently says that only if a regulatory decision costs more than $100 million it is considered a major rule, thus triggering lengthy reviews and certain protections in the bill. Only a small percentage of Superfund sites involve costs of more than $100 million. As a result, most Superfund sites would be exempt from the procedures I just mentioned that are established by the bill.

That was apparently unacceptable to those who want to avoid costs and delay in cleanups. As a result, they created the lower threshold of $10 million which would apply only to Superfund sites. And if that triggers some suspicion in the minds of those who are trying to figure it out, that suspicion is warranted. Every other regulatory decision has to cost more than $100 million before it is considered a major rule. But at Superfund sites—and only there—the threshold will be considered to be a major rule when it starts at $10 million.

There is no logical explanation of why; no justification for the exception, just a little provision that treats Superfund differently than any other program in the Federal Government.

Mr. President, to me it is obvious that there is intentionally or otherwise a mission here that would emasculate the Superfund program. That may satisfy some who will do what they can to delay the cleanups required, or at least for it to kill the program. It may help those who want to escape their obligation to pay for the cleanup of sites but it will not satisfy those who want to get after the environmental blight, and it should not satisfy anyone who wants to protect the health and safety of the millions of Americans who live, work, or play near Superfund sites.

By the way, for many, that is not an option. That is where home is. That is where work is. That is where a school might be. They did not choose to build or to live near these sites. But, unfortunately, once these environmental problems were discovered it was a new learning experience for people. Suddenly, they learned that perhaps the water supply may be contaminated or the ground that their kids are playing on may be dangerous for them.

One of the many unintended impacts of this bill is the dead certain proposition that it will make the problems that plague the Superfund program worse.

This bill would have the effect of stopping Superfund cleanups in their tracks apparently under the theory that we need to spend more time doing more studies before deciding what we can do to clean up the mess that we have already been studying for years and years.

Let us be candid. The Superfund program already contains an extensive risk analysis and cost-benefit evaluation. The private parties who are responsible for the cleanup are already involved in the remediation process. And so is the affected community. The criticism of the Superfund program is that it studies too much and does too little. Look at what we do already.

Superfund site remediation decisions are not made casually or without consideration of risks or cost benefit. Under the present law, EPA must conduct numerous studies and consider costs and other factors in selecting a cleanup remedy. During the remedy selection phase, a detailed risk assessment is conducted by looking at the people and the environment exposed to the risks associated with the Superfund with this toxic site. For the pathways of exposure, such as ground water, surface water, air, soil, however, the contamination travels in the specific contaminants present at the site.

Following these studies, EPA announces a proposed cleanup approach, receives public comment on that approach, and issues a record decision to memorialize its final cleanup decision.

Often the private parties performing the studies in cleanups have been very involved in developing the appropriate remedy. We do all of that now. Yet, S. 343 says that we ought to do more studies which would, of course, mean less cleanup. It allows a party to reopen the whole process once a decision about how a cleanup process ought to proceed. In fact, it will allow a party to reopen the whole program even after construction and implementation of the cleanup program has begun.

This legislation virtually requires an expensive, slow, and often duplicative study process even if the private parties involved are not wanted and did not believe it was necessary. This bill would virtually require reconsideration and reevaluation of the cleanup strategies that are being developed and instituted at hundreds of sites. This would be a tragic development and a tremendous waste of resources. It would cause great consternation at the sites where communities have negotiated and agreed to a level of cleanup that could be overruled by this law.

How do we explain to the residents living near Superfund sites that we are going to throw out years of study, years of work, and construction in many cases and stop and restudy the whole cleanup from start to finish?

During the last Congress, EPA, industry and the environmental community produced a set of consensus proposals to reform Superfund, to reduce litigation, to speed cleanups, to cut repetitive analysis and to improve public participation in the cleanup process.

Mr. President, I was again then chairman of the subcommittee, and everybody worked hard—Democrats, Republicans, the administration, outside groups, be they industry, academic, Government, environmentalist. Everybody pitched in to try to reform Superfund because there have been problems with it. No one can deny that. But its mission is a purposeful one.

As a result of some obstruction, we did not pass that reform Superfund proposal. Frankly, I thought it was an environmental tragedy after so much work and so much agreement had been hammered out with parties that typically disagree, and here we are today now first reviewing the Superfund program. Once again, it is nearing its expiration date. Lots and lots of money has been spent, billions by the way, and much of it in the learning process because, unfortunately, it was not the job that we expected to have to do when we set out to do it. It took a lot more because the toxic contamination was a lot worse, and as a consequence we are now in a situation where the moneys spent up front are beginning to pay off. But we did not get the chance, we did not have the outcome that we wanted to have to speed cleanups and to reduce litigation costs.

Additional changes to speed cleanup are now being considered in the Environment and Public Works Committee, and they are likely to be approved. This bill threatens to go in the opposite direction by increasing litigation, adding more needless analyses and slowing cleanups while saddling EPA with new paperwork burdens.

Now, I am working with the chairman of the Superfund subcommittee, Senator SMITH of New Hampshire, on Superfund reform and reauthorization. We do not necessarily agree about how the program ought to be changed, but the fact is that we are talking, and we are bringing in witnesses, and we have had testimony and hearings. I think it has improved the atmosphere as well as the possibility that Superfund reform is going to be accomplished in fairly short order. I believe that we agree that reform is supposed to increase speed and reduce redundant studies.

This bill is inconsistent, Mr. President, with that vision of reform. It is also inconsistent with a serious effort to get Superfund reformed and reauthorized rather than have this buried as a subsection of this long and complex bill dealing with regulatory reform. This is not the way to do business.

Mr. President, Superfund is not necessarily popular with everybody, but cleaning up our hazardous waste is a mission that all of us I believe can agree upon. It is a very expensive proposition. It has been looked at over the last 50 years, and finally in 1980, a law was established to move the process along.

Now, private parties do not like cleaning up the mess if they caused it or if they are found jointly or severally responsible. Insurance companies do not like it because they have to pay the claims. But the strongest criticism of our hazardous waste cleanup programs is our unending studies to determine the proper remedy.

In fact, Congress recently spoke to this issue. During the last rescissions bill, $300 million was rescinded from the Department of Defense cleanup program because it was felt that too

much money was being spent on studies and not enough on cleanups. This provision would require yet more money be spent on just such studies which would both delay cleanups and leave less money for that task.

I do not want to go back to Superfund sites in my State and explain to my constituents who live near Superfund sites that agreed upon remedies are going to be reopened for a further round of studies.

I do not want to have to explain that a new study phase will delay cleanup for years and years. They do not like that news. I do not want to have to tell them that cleanups already begun will suddenly be halted when they have already lived with threats to them and their family's health for already too long a period of time.

Why is this delay inevitable? Well, in addition to the opportunities it gives to private interests to create delay, look at what it does to the Government's ability to move forward quickly. The EPA now processes about 10 major rules a year. Under this bill, it is estimated that EPA will have to do a complete risk assessment and cost-benefit analysis for about 45 major rules each year for the various programs it administers.

I wish to make clear what happens with a major rule. It involves lots and lots of people. It involves lots of computer use. It involves lots of calculation. It involves lots of time and lots of money. This is not to say that we should not be doing studies. We should. But we have already done them, done them sufficiently I think to answer all of the concerns that people have. But if our amendment fails here and EPA must do a cost-benefit and risk assessment for Superfund sites over $10 million, it will have to do approximately 650 additional risk assessments and cost-benefit analyses.

Mr. President, my argument can be summarized in these three points. First, the bill before us treats Superfund in an unjustified, special, and unique way. It contains a special carveout for the particular interests that want to reduce or evade their responsibility to pay for cleanups.

Second, the bill before us will inevitably delay cleanups, prolonging the risks those toxic hot spots pose to human beings and to the environment. That delay is a function of the overt mechanisms in the bill which require new studies and the practical inability of EPA to conduct the number of studies which will be required.

We want EPA to be an organization that conducts cleanups. We do not want it to devote all of its time to doing studies.

So the bill will cause delay in cleanup, the one thing that we all want to hasten.

And third, there is no finding that these new studies are required. Superfund already has sophisticated cost-benefit and risk analysis. If you think there ought to be changes in the way that analysis is conducted, then require those changes when we reauthorize Superfund in an orderly process. Do not try to force them into a bill that has a much more general goal of reforming the process by which we regulate.

Mr. President, we ought to let the authorizing committee handle Superfund. We are working toward that goal. And when we bring legislation to the floor we can understand it, we can debate it, and justify the decisions that we make. Doing reform in the backdoor manner proposed by this bill is totally unacceptable.

I want to point out what is here on the chart to emphasize, that is, that presently we have already 430 sites where cleanup is underway. We have decisions being made at 211 sites. We have remedy selections at 74 sites and studies already underway at 263 sites. If S. 343 passes as it is, then what we will do is we will have to study 763 sites. It means practically the end of serious decisions about cleanup and beginning the process.

What we will be left with is 215 sites with cleanup underway, as opposed to 430, and decisions underway for 211 other sites. We will move into the study phase. This will turn out to be a calculous laboratory where everybody will be participating in studies and not getting work done and will exaggerate criticism that now exists that all we do is study things to death. We have studied things, I hope not to death, but we have studied them for a long time. The decisions are made on the science available, and there is an orderly process. We ought not tinker with it, but reform it in an orderly way.

So, Mr. President, I urge my colleagues to support the motion that is now before us to strike the special relief language for special interests that are now in this bill. I yield the floor.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Arizona.

Mr. KYL. Thank you, Mr. President.

I would like to make a few remarks regarding Superfund and the reasons why it is included in this legislation. There are a couple of anomalous things about the Superfund law. One of them is that there is no judicial review. And I think it is no coincidence that one of the laws that is working least well, a point that all of us would agree on, is also a law that provides for no judicial review. The second thing is that the Superfund law actually does provide today for some cost-benefited analysis and risk assessment. So it is not a new concept when applied to this law.

But the bill before us, the Dole-Johnston amendment, would really provide a more precise and meaningful procedure for applying that cost-benefit analysis to Superfund so that the net result should be not more costly studies and delay, but a more precise application of a principle which is already required and which should make much more efficient the process for deciding the priority of sites to be cleaned up, and probably also make it easier if the judicial review provisions are put into place to really test those that need to be tested and allow the others to proceed to clean up.

So we believe that S. 343 establishes strong, good requirements to do the right kind of risk assessment and cost-benefit analysis for Superfund cleanups. And, of course, the point also here is that it is in those cases that exceed $10 million. Now, we have heard arguments here by some that would like to see this section removed from the bill. I will make the point first of all that there is much more than Superfund in the amendment which would be removed from this bill. We will leave that for others to discuss.

But just to focus on the question of whether the Superfund provision should be removed, in many respects Superfund is an example of the best of the worst. Unlike many other programs with tangible results, Superfund has almost nothing to show for its billions of dollars in expenditures of public and private funds, I might add.

And again, this is a point upon which a lot of us would agree: Superfund has just not met the expectations that we had for it at the time that it was adopted. So clearly, more effective risk and cost-benefit analysis are desperately needed for the program. These are the tools that the Government can use in carrying out the requirements of the law.

So instead of trying to remove these provisions from the bill, we ought to be strengthening those procedures so we can really do the prioritization necessary to get to the job of cleaning up the sites that need to be cleaned up and leaving the others alone.

As I said before, also ironically, Superfund already requires cost-benefit analysis. It requires the President to select appropriate remedial actions that ''provide for cost effective response'' and to consider both the short-term and long-term costs of the actions.

It requires the President to establish a regulation called the national contingency plan to carry out the requirements of the statute. This plan has several requirements that would contain methods for analysis of relative costs or remedial actions; means for assuring that remedial actions are cost-effective over time; criteria based on relative risk or danger for determining priorities among releases of hazardous substances for purposes of taking remedial action. The national contingency plan also requires a baseline risk assessment to be performed for every remedial action. This means that for every Superfund cleanup, a risk assessment is supposed to be done right now.

It requires the President to identify priority sites that require remedial action through a hazard ranking system that must—again, I am quoting—''assess the relative degree of risk.''

So to suggest that somehow both cost-benefit and risk assessment are inconsistent with the Superfund is to ignore existing law. It is in the existing law. So by taking it out of that provision, we are not removing that concept. But what we are doing is preventing ourselves from providing a more effective means of applying the cost-benefit and risk assessment to Superfund.

Now what happens at the typical Superfund site? I exaggerate almost none here, Mr. President. You have a release of some kind of hazardous substance discovered. The presence of this substance in the environment may or may not be harmful. Before that is even determined, practically every small business in the community that has ever had any contact with the site at all gets a letter.

The letter basically says, ''We think you are liable. Prove to us that you are not.'' So immediately, you have all of the small businesses and some big businesses, too, immediately put into the position of being in a group of defendants having to try to prove that they are not liable for something that frequently occurred a long time ago without knowledge on their part.

The costs to small business are very high. And it costs more than just money. The cost in time, in terror, literally, in toil and frustration in dealing with the alleged Superfund liability is one of the most gross aberrations in our legal system that we have on the books today, which is one of the reasons why there has been a lot of discussion about the reform of Superfund that hopefully we will get a little later.

But every mom and pop operation that sent trash to a landfill that became a Superfund site knows exactly what I mean. The strict joint and several retroactive liability in this law is dragging down small business for the third time.

And the recourse? Essentially none. Because unlike other laws and unlike S. 343 before us, Superfund expressly prohibits judicial review. Now, is that really what the opponents of this law applied to Superfund want? I do not think it is coincidence, as I said before, that the most oppressive and maligned and dysfunctional environmental program we have is also the one that prohibits redress in the courts. This is something on which we are all in agreement.

So why can we not agree to provide judicial review to Superfund? Why is there opposition to having regulatory reform for Superfund in this bill? Even the administration has said it needs to go forward.

In a memorandum prepared by the Council on Environmental Quality, the administration correctly pointed out the blatant inconsistencies regarding its posture regarding S. 343 and its position on regulatory reform and cleanup statutes.

Here is what this memo states: That opposition to the intent of the cleanup provision in S. 343 is ''inconsistent with several administration policies.''

Quoting again. ''The administration has repeatedly testified that cost-benefit analysis is a 'useful tool' in making cleanup decisions.'' Again quoting. ''EPA, DOD, and DOE have made well-publicized commitments to more realistic risk analysis in cleanup activity,'' exactly what we are talking about in this bill.

Executive Order 12866 requires cost-benefit analysis for regulations over $100 million. Many cleanups exceed this amount and the total cost of cleanup activities approaches or exceeds $400 billion. Quoting from this memorandum:

> It will be hard, politically and logically, to defend application of the cost-benefit comparison to the former decisions and not the latter.

This is the administration speaking.

Now, critics of this section argue that these reforms should be addressed in the Superfund reauthorization, and that is an appropriate place to deal with some of the reforms we are talking about.

That is not to suggest, however, that in a bill dealing with cost-benefit analysis and risk assessment and judicial review those matters should not be dealt with in this legislation.

I know that Senator SMITH, and others who have spoken here, members of the Environment and Public Works Committee, have been working very hard, but Superfund reauthorization may not be completed this year. I know the committee that I sit on, Energy and Natural Resources, understands the toll this program is taking on industrial facilities, small businesses and understands the need to get on with the process of reform of the process as opposed to the substance, which will, of course, be covered in the reauthorization.

We are cutting our training and operation budgets in the military services and yet we keep getting higher price tags for installation cleanups. I cannot even begin to tell you what the runaway cleanup costs translate to in the Department of Energy.

So, Mr. President, in conclusion, I believe that the Superfund cleanup provisions in this legislation are entirely consistent with existing law. They are consistent with planned administrative reforms that the Clinton administration is putting in place even now, as indicated by the memorandum I cited, and, perhaps most important, I think many of us would agree that Superfund is not a level playing field, that small business is being savaged by what amounts to institutionalized extortion from regulations.

Federal and State regulators have ignored the risk and cost considerations throughout the process, in spite of the statutory requirement to consider those factors, and that is why this legislation is needed. The program is so badly broken and so desperately in need of major change, largely because the degree and the costs of cleanup have proceeded virtually unchecked for years. Simply having these provisions in this bill has brought about a new willingness on the part of regulators to be more realistic in the remedial action selection process.

The Superfund provisions of S. 343 are consistent with the law, are a needed reform of the remedy selection process, and are an appropriate and necessary reform of one of the most expensive, intimidating and crushing regulatory programs for small business in the history of this country.

Mr. BAUCUS. I wonder if the Senator will yield to me?

Mr. KYL. I will be happy to yield. Of course.

Mr. BAUCUS. I appreciate the Senator yielding. I heard the Senator say that in the Senator's opinion that the provisions of S. 343, particularly section 628, are consistent with or conform with basically the Superfund cost-benefit or risk assessment provisions now, and because they are consistent and basically conform, there should be no opposition. My question is, if they are consistent, conform, then what is the purpose of this provision? That is, the Superfund already does contain, as the Senator already said, cost-benefit and risk assessment provisions in determining sites and remedy selection and plans for cleanup. I am just curious, what is the need for this provision?

Mr. KYL. Precisely the correct question to ask, and I appreciate it, because it applies not only to this issue but several others in other aspects of this legislation. We have Executive orders since the administration of President Ford, for example, which require cost-benefit analysis, but almost all of us, I think, are in agreement that they have not worked. The procedures are not in place to force compliance and to provide for appropriate judicial review.

So what I am saying is that while there is a requirement for cost-benefit analysis and risk assessment in the existing law, it is not working, and the provisions of this bill will allow it to work in a way which gets to the other point that the Senator from Montana was raising, and that is that we have spent a lot of money and do not have a lot to show for it.

Mr. BAUCUS. I understand. If I might ask——

Mr. KYL. We should not delay any longer. I think this legislation will make the existing regulations workable for the first time.

Mr. BAUCUS. Another question. I am just curious of the Senator's view, what is the precise language in section 628 that will speed up cleanups, that will address the problems small businesses face, that will reduce regulatory red tape, that addresses the joint and several and strict liability problem that bedevils so many parties involving cleanup sites? I wonder what is the precise language in this amendment which addresses the real problems—I agree they exist—that so many people face when dealing with Superfund. Can the

Senator point out some language in the amendment that he thinks will specifically help answer some of those problems?

Mr. KYL. Sure. The entire section that establishes the procedure and the judicial review, which is missing from the Superfund legislation, will make it possible for individuals to insist that proper risk assessment and cost-benefit analysis is applied, and if it is not, a remedy will exist to require it to be applied, something which does not exist today.

Mr. BAUCUS. I am just perplexed, in all candor, because the provisions of section 628 with respect to risk assessment are actually quite different from current Superfund law.

Let me point out some differences. One, under this bill cleanups would generally be required only if the benefits justify the costs. That is a different standard than current law. And second, under this bill only the least-cost cleanup option would be selected. That is now not the case under Superfund.

So they are not the same. Thus, S. 343, including section 628, would, by definition, require EPA, for example, and the States to stop what they are now doing and go back all over again from scratch and start the risk assessment and cost-benefit analysis, which would add more cost, more delay, and more red tape. And because Federal facility sites will cost more than $10 million to clean up, the clean up of each of these sites would be further delayed under the provisions of this bill.

Why does the Senator believe that those provisions would not necessarily stop the present cleanup program and cause more red tape, more delay?

Mr. KYL. First of all, the Senator is absolutely correct. The provisions of this bill are somewhat different from existing law with respect to the specific tests for cost-benefit analysis and risk assessment. That is the whole point.

My point in pointing out that cost-benefit analysis and risk assessment are already part of Superfund was to illustrate two things: First, that the concept is not alien or inimical to Superfund. This is something that we have already said should be a part of our analysis for Superfund cleanups.

Mr. BAUCUS. If I could just——

Mr. KYL. If I could just go on.

Mr. BAUCUS. Sure.

Mr. KYL. And second, to note that while that is true, while it was our intention, while we wrote the exact words in the statute, it has not worked. And I think we agree on that.

So, yes, the answer to the first question is there are different provisions—that is the whole point—to make it work because it has not worked in the past. The administration itself, CEQ, pointed out the fact that it would be pretty inconsistent to argue you should have cost-benefit analysis before, but now it is not appropriate.

But the second question I think the Senator asks is the more difficult question and the one that is really important—and I respect the Senator for raising the issue—namely, we want to get on with the cleanup of these sites. Will this cause a delay or not?

That is a very legitimate question. But I think, again, there are two answers. One, reasonable people can differ whether it will cause delay. We do not want it to cause delay, but we want it to do the right thing, and that is the other point here. We have to do the right thing. A lot of us believe we are spending millions and billions of dollars, really, in activities which are totally nonproductive where the risks are exceedingly low, where we ought not be wasting our money, and there are other sites that just beg to be cleaned up. Perhaps one of them is the example the Senator from Montana cited where we have to get on with it and prioritize those sites and get the job done where the cost clearly is outweighed by the benefits to be achieved. So that is the kind of analysis in which to engage.

Instead, what we have is taxpayers paying lawyers and consultants billions of dollars to essentially waste time, dollars that are not only Government dollars but also small business dollars and other business dollars, and that is what we are trying to resolve with this legislation.

Mr. BAUCUS addressed the Chair.

Mr. KYL. I am happy to yield my time. I have concluded my remarks. If the Senators would like to take it at this point.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I appreciate the comments of the Senator from Arizona. With all due respect, they are really not on target. That is for this reason. We all agree that Superfund has terrific problems. But the problems that it has are not solved by this amendment. This amendment does not even address—does not even begin to address—the problems of the Superfund. In some sense, they are irrelevant to the problems facing Superfund. I will explain that.

One of the main problems of Superfund today is joint and several and strict liability. This amendment has nothing to do with that, despite what the Senator from Arizona would like us to believe. Under joint and several and strict liability standards today, all parties are subject to the same joint and several and strict liability standard. And what happens? Some company—maybe the primary perpetrator that caused most of the toxic waste and hazardous waste at a site and other companies may be partners, or another company may have bought the site later, or a company may have owned the site earlier. A bank might be involved. A bank might have made a certain loan to one of the parties. Under the current law, they are all lumped in together. They are all jointly and severally liable and subject to strict liability. That is the current law.

Here is what happens. Everybody sues everybody else claiming that he is the principal problem—not me but him. Well, everybody that is subject to liability, of course, is jointly and severally liable. That is why there are a lot of lawsuits today. It is the standard which creates the lawsuits. All of the people that are involved are suing each other.

This amendment has nothing to do with that—nothing to do with that. So to stand up here on the floor of the Senate and say this amendment, section 628, is going to solve the problems of the red tape and delay, is a nonstatement, it is not accurate. It is not accurate because the problems facing people that cause all of the problems of the Superfund are caused by the underlying statute, substantive law not addressed by this amendment.

Here is another example. Let us take a small businessman, somebody who has fewer than 50 barrels of hazardous waste at a site, who is a de minimis contributor. Under the provisions of the Superfund reform which we tried to enact last year, small businesses would be either exempt if they are particularly small; or if they are somewhat small, they would be entitled to a very expeditious standard and their liability limited to their ability to pay. That is a problem that the Environment and Public Works Committee tried to solve last year. But section 628 of this bill has nothing whatsoever to do with these real problems—nothing.

All section 628 says is cost-benefit analysis and risk assessment must be prepared. It has nothing to do with the problems of small business, Mr. President—nothing. Last year, we tried to enact Superfund reform—and as the Senator from New Jersey a few minutes ago very ably stated, it was stopped. We came up with a provision that eliminated joint and several liability to those who settled their liability through a new voluntary allocation system and not through court. Under this new allocation system companies would have an allocator decide which company is proportionately responsible for which portion of the waste. And if the company agrees and settles, they could not be sued; they would be immune from a lawsuit. Good idea. Everybody thought it was a good idea. Big business loved it. Small business was ecstatic. Environmentalists thought it was great. All the groups came together and agreed that this is a good, major reform to the Superfund.

There are lots of other reforms in Superfund that we tried to pass last year. Some just did not want it passed. It was a disservice to the country. So here we are all over again trying to reform Superfund. This amendment has nothing to do with any of that. Nothing. N-o-t-h-i-n-g. The way to solve Superfund, Mr. President, frankly, is not to pass this amendment.

What does this amendment do? It says you take the current lousy, botched up, unworkable Superfund program and add to all of the problems—more problems. It says start over again

and add a new kind of risk assessment and cost-benefit analysis. That is what this amendment does. It says, take the current lousy law and delay it further, add more redtape, start all over again. It means fewer cleanups. There are lots of sites in this country, Mr. President, where cleanups are finally agreed to and are in progress. It has taken 10, 12, 15 years in some cases. This amendment says go back and start over again. That is exactly what it does, despite what anybody else says.

So the answer, I think—and I have given a lot of thoughtful consideration to this, not rhetoric or a lot of stuff, not playing to the cameras—a thoughtful solution to this, frankly, is to delete this provision from the bill. It is not going to solve the Superfund problems. Somebody might like to say that it does for the people back home. In fact, it makes it worse.

Rather, let us solve this the only way these problems can be solved; that is, to lower the rhetoric, quit the demagoguery, sit down and work with all of the people involved. You roll up your sleeves and cross the t's and dot the i's and find a solution, which is what happened over a year ago. Many outside groups who know the subject came together, worked hard, and reached an agreement. Most of the insurance industry also agreed. Some of the insurance industry did not agree, but most did.

Let me read some of the supporters of it: Aetna Life Insurance, Allied Signal, American Automobile Manufacturers—this list goes on and on, and I will not bore the Senate. I am glancing here, and these are big, well-recognized organizations and companies. There must be over 100 on this list.

One of the greatest disservices this Congress has performed, in my judgment, in the last several years is the failure to pass Superfund legislation a year ago because it was a solid reform that would have helped people, provided a public service, which is what we are all elected to do. This amendment in this bill, section 628, not only does not do that, it makes a bad problem worse.

I just ask every Senator and every staff person listening to forget the rhetoric, read the provisions of this bill, section 628, read Superfund, and just think. All you have to do is think. If you think, you are going to reach, I submit, roughly the same conclusion and therefore realize that, maybe we should not be including Superfund in this regulatory reform bill after all. And if we are going to do right by our people back home, let us take it out and reform Superfund in the right way, through the committee process, something along the lines that we enacted a year ago.

Mr. JOHNSTON. Mr. President, I yield to no one in this body on my enthusiasm for risk assessment. It was I who first proposed, wrote, and passed twice a risk assessment provision, which did not pass the House, of course, and so we are here today working on this legislation.

I believe the concept of risk assessment is one of the most important things we can ever do for this Government. It will save, I believe, hundreds of billions of dollars. It will relieve taxpayers and citizens of this country of huge and unnecessary burdens and will allow the means that we have, the dollars that we have in this country, to be spent on environmental and health and safety matters, to be applied to environment and safety and health matters and not to waste, as it is today.

Now, having said that, Mr. President, I rise in enthusiastic and very strong support of this amendment. The reason is that this amendment and the application of this procedure to Superfund, as well as to defense cleanups, as well as to cleanups under the Solid Waste Disposal Act, do not fit.

They do not fit, Mr. President. We have been talking about Superfund, and I concur with comments of my colleague from Montana, that that needs to go through that committee. That committee voted out and passed that bill last year. We need to do that again this year.

Mr. President, we have not spoken about cleanup at defense plants. Cleanup at defense plants is an activity on which we are presently spending over $6 billion a year. It is the largest cleanup activity of the Federal Government.

Now, Mr. President, we commissioned a report on the Hanford site, which is the most difficult site and the most expensive site of the DOE. They came back with a horror story about how money is being squandered and nothing is being done. I will not go into all the reasons, but the principal reasons are that the legal matrix, the legal framework that we in the Congress have created for Hanford as well as other DOE sites, does not work.

We not only have the Superfund, which is applicable to Hanford, we have RCRA, which pertains to chemical wastes. We have a tripartite agreement setting standards, dates, and requirements—dates that cannot be met, standards that have not been passed, and using technologies that do not exist.

Moreover, Mr. President, we have superimposed upon that an act we call the Federal Facilities Act, under which the Federal Government can be sued and the Assistant Secretary of Energy can be put in jail—something he is very concerned about—if they do not meet standards and dates that are impossible to meet because there is no place, for example, to store the waste, because the waste isolation pilot plant is not ready, and that is the only place available for some of these mixed wastes.

Mr. President, it is probably only the Congress of the United States which could have designed a legal framework as confusing, as contradictory, as difficult, as unworkable, as unbelievable as we have created for our defense plants' cleanups.

Now, Mr. President, the Senator from Alaska [Mr. MURKOWSKI] and I have proposed legislation for Hanford. We have proposed to deal not only with CERCLA but RCRA, the Federal Facilities Act, the tripartite agreement. We proposed to reconstruct that and do it over again.

It is not that we do not want to use risk assessment. Risk assessment is central to the issue. It is a risk assessment procedure that would be vastly different from that which we have constructed in this bill.

This bill constructs risk assessment principally for Federal rulemaking, EPA-type rules. It is workable, a good procedure, which, Mr. President, I am very proud of the handiwork in the Dole-Johnston bill. I think it is workable. I think it will improve environment. I think it will improve health. It will save lots of money. It is a very, very good bill.

But it does not fit for defense plants' cleanups. We have to deal with those tripartite agreements. They have, Mr. President, as I am sure all my colleagues know, a problem at these defense plants, what we call mixed waste—mixed chemical waste and mixed nuclear waste or radioactive waste. One set of regulations for radioactive waste, one set of regulations for chemical waste, and no technology yet to deal with the mixed wastes. Some promising research is being done, and no place to put the waste.

Literally, our Assistant Secretary of Energy, unless we change the law, can go to jail for not doing what is impossible to accomplish. Absolutely that is true, Mr. President. The waste isolation pilot plant is not ready.

By the way, the reason it is not ready is also because we do not have a well-working risk assessment bill. If we did, they would have done the risk assessment and would not be doing some of the silly things they are doing down in Carlsbad, NM, on delay and unnecessary expense in the plan.

Be that as it may, WIPP is not ready and we have no place to put the waste and we do not have the technology. It is a grand and glorious mess.

What we propose if we can pass our legislation, Mr. President, is create this paradigm, this legal matrix, limit it to Hanford, and then we propose to use that as the model for other defense plants. We will have to modify it—things are a little bit different, at Rocky Flats in Colorado, et cetera. Each one of these sites has their own peculiarities. Some have a lot of plutonium, some have a lot of mixed waste. Hanford has almost every imaginable kind of waste.

Each of those deserves the time and attention, in the case of defense plants, of the Energy Committee; in the case of CERCLA, of the Environment and Public Works Committee. They are different problems from those we seek to serve in the Dole-Johnston bill presently pending.

Mr. President, in including Superfund and environmental cleanup

in the original Dole-Johnston amendment, we knew at the time that we included it that it would be subject to an amendment and that it would probably come out. I say ''we'' knew that; I do not want to speak for anybody else but myself. Let me say that I and my staff knew it and we discussed it, and I think the feeling was at that time that it should be included in the draft in order, first, to draw attention to the issue; second, to give some leverage in assuring that we would deal with the question of Superfund and of defense cleanup.

Indeed, we have had Senator BAUCUS, the ranking member, come and say that he is anxious, willing, and able and can virtually promise that that committee will deal with the issue.

I think there are Members who are so anxious for risk assessment to be made part of CERCLA that they want to get those assurances. I think now we have heard those assurances on the floor of the Senate.

I hope, therefore, with those assurances, that the committee such as Energy and Natural Resources, with respect to defense plants, can proceed and do our business and enact the legislation that Senator MURKOWSKI and I presently have pending. I hope that the Environment and Public Works Committee will expeditiously report out that bill again which we passed last year, and that we can get on and pass this risk-assessment cost-benefit legislation presently pending.

Mr. President, I am getting more hopeful and more confident as the hours pass, that the spirit in this Chamber is such that it will allow the Senate to pass this bill with a strong bipartisan effort. I think acceptance of this amendment will be a strong indication of that. I hope we can vote soon.

Mr. CAMPBELL. Mr. President, I rise in strong support of the amendment by the Senator from Montana.

Count me in among those who believe that there are serious problems with the superfund program and the Energy Department cleanup program. It is plain to me that we are spending a lot more money, and a lot more time, on lawyers and bureaucracy than we are on getting these cleanups underway.

I agree that the superfund program is not working, and I think we need to make major changes to make it work better. But not at the price of further delay and further bureaucracy that will delay these cleanups even longer.

The Rocky Mountain Arsenal outside of Denver was used for years as a production facility for chemical munitions by the Defense Department. Since the 1950's it was used to produce pesticides. The defense department and the Shell Oil Co. left a pretty tough mess.

In 1984 the site was listed as a national superfund site, and it is now more than a decade that the site has been under study, and significant cleanup has already occurred to resolve immediate threats to human health and the environment. Just last month a conceptual agreement was reached on a final cleanup plan at the arsenal. That agreement must go through the public comment process and a final decision should be made by early next year.

If this amendment is not accepted, the door will be open to anyone to file a new challenge to this long, tortuously negotiated accord based on the new rights created under this bill to seek additional cost benefit and risk analysis studies.

Some Senators may be familiar with the Summitville mine disaster; since that mining company declared bankruptcy and left my State with a massive cleanup problem, we've seen decisions made and cleanup projects begun. Again, I don't want this bill to be the cause of any further delay in getting this critical work underway.

I have other, tough cleanup problems in my State, at Leadville, at Clear Creek, and many other sites. I want this program to work better, and I'll be supporting major changes in the program when we consider reauthorization later this year.

As any of my colleagues who are involved with superfund know, that process takes too long and our constituents get very frustrated when they see a lot of planning and not much actual cleanup. I don't want to extend that process even a day longer than necessary, and so I urge my colleagues to support the Baucus amendment.

Mr. THOMAS. Mr. President, I ask unanimous consent to proceed in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming is recognized.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 1031 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, we had a lot of discussion in the last 3 days on the need for regulatory reform. We have had a lot of horror stories presented about undue regulation and what it has done to small business people and farmers of the United States. That impacts negatively on everybody as it inhibits the creation of jobs, as it brings undue costs to the operation of a business and, in many instances, with harm to the public if nothing is changed.

I have taken the floor several times to discuss some of these problems with existing rules and regulations, or the implementation of those rules and regulations. I want to address another issue like I did yesterday on the subject of wetlands.

Before I do, I want to visit a little about the general atmosphere of the debate here on this regulatory reform bill in the U.S. Senate. We are led to believe that all of our concern about public health and safety and the environmental policies are going to be thrown out the window with the adoption of a regulatory reform bill. It is not, because our bill does not change any of the substantive laws that are on the books in each one of those areas.

If it did, that is what we would call, in this body, a supermandate, one law overriding others. In fact, we recently adopted an amendment just to make it more clear that there is nothing in this legislation that is a supermandate. And we have also been hearing a lot of other concern expressed, mostly on the Democratic side of the aisle, about bad aspects of this legislation.

I would plead with the Democratic Members of this body who have been fighting this bill so hard, that they should want Government to work well. They should want Government to work efficiently. They should want Government to work in a cost-effective way. They should want Government to serve people rather than people serving the Government.

Another way to say that is, they should want Government to be a servant of the people rather than a master of the people.

I know Democratic Members of this body believe that all Government is good. And I know that they believe that basically Government means well and does well, and they are willing to give the benefit to big Government, that when there is some doubt about whether Government is really going to do well, that we ought to err on the side of Government doing it. That is a legitimate political philosophy that I find no fault with. I do not accept it, but it is a legitimate political philosophy that we can have in our system of government.

What does that have to do with the bill that is before us and my pleading with the Democratic Members of this body? There is nothing wrong with believing in big Government. There is nothing wrong in believing, if you think it is best for the country, in a regulatory state. There may not be anything wrong with believing that regulators ought to dominate more so than the free market system determinations made in our economy.

But the very least, if you believe all those things, you should make sure that the regulatory state, that the big Government you believe in, will actually work well and effectively deliver the services that you want delivered. And the fact of the matter is this big Government, this big regulatory state that you like so well not only does not deliver well, but the rulemaking process is much more costly than it need be. It impinges upon the marketplace much more than need be to protect the public health and safety and the environment. And it just does not work very well because it never delivers a decision. You know it is just awfully difficult to get a decision out of the Government, and particularly when

you have two Government agencies fighting each other.

The very least—I plead with you—if you believe in the big Government that you practice, that you ought to be for making it efficient and effective. And your big Government and your big regulatory state, we are saying on this side of the aisle, does not work very well, and we see S. 343 as a process of making sure that it is cost effective because of the cost-benefit analysis, that it has a sound basis because we require scientific determinations and risk assessment, and that it should not be a law unto itself. We protect against that in this legislation through congressional review of regulatory action and through judicial review of regulatory action.

I hope during this debate—and this will be the fourth time I have been involved in an example just in my State—my State is only 1.5 percent of the people in this country, but some horror stories have taken place in my State. Remember the first day I spoke about EPA enforcing one of its rules on toxic waste. They had a paid informant that was a disgruntled employee of a local gravel company, the Higman Co., in a little town of Akron in northwest Iowa. The information was not correct, but they decided to invade his place of business. One quiet morning they came in with their shotguns pumped, their bulletproof vests on, 40 Federal and local law enforcement people to find that toxic waste and to arrest the manager.

He tried to find out what was the big deal. They told him to shut up. They stuck the gun in the face of his accountant. She is a nervous wreck yet as a result of that action. It cost him $200,000 of lost business and legal fees to defend himself on a criminal charge that he was not found guilty on because there was not any toxic waste buried in his gravel pit because this process of making a determination was bad.

I told you the next day about how there is an EPA regulation on the books under the Clean Air Act affecting the grain elevators in the rural communities where farmers send their grain for processing and for sale. We have 700 of these grain elevators in my State. They are charged with proving to the Government that they do not pollute. The initial determination of that is to fill out a 280-page document for EPA, which some of these elevators are paying $25,000 to $40,000 of consulting fees to help get filled out properly. Then once they are filled out properly and go to the EPA, only 1 percent of the 700 are going to come over the threshold determined by EPA that you are a polluting business.

But what really is strange about that rule is this: EPA assumes that you are going to be polluting 365 days a year, 24 hours a day, when the problem that EPA is trying to get at is a seasonal problem in which the elevators are operating for about 30 to 45 days out of a year in which there might not be any problem whatsoever.

They have each one of these little grain elevators supposedly in business processing grain every day of the year, every hour of the day. Any one of these, under that assumption, would have to have the entire corn crop of the entire United States, 10.03 billion bushels, processed through any one of these little businesses.

Then I told you next about the farmer in Mahaska County, IA, that bought a farm in 1988. And in 1989 he got permission from the Soil Conservation Service for clearing some trees and improving the drainage system. He had the approval of a Government agency of everything he did, even the approval of the Iowa Department of Natural Resources.

Within just a few months the Corps of Engineers threatened to fine him $25,000 a day because he was doing something without one of their permits saying it was a wetland when it was not a wetland. All you have to do to prove that is to drill little holes in the ground and find out how close the water is to the surface. And it was not 4 to 5 feet. In order to be a wetland you have to have 7 days of continuous water on the land. Yet, they wanted to fine him $25,000 a day for what another Government agency said he could do. Then later on that first Government agency said he could do it. They backed off and said they had made a mistake. Then he appeals it through the local, the State, and the national office. Here it is 1995, and he still does not have a determination of what he can do with that land.

As I said to the big Government Democrats that are opposing our bill, it seems to me that, if you want to believe in big Government, OK. But at least Government ought to be able to give a constituent some sort of an answer. If you say they have done something wrong, they ought to be able to get an answer. You ought to be able to have the Government agencies agree among themselves on what the policy is.

This is a perfect example of Government out of control. This young Mahaska County farmer still does not know where he stands with this land. He could potentially pay a lot of fees. In the meantime, he has paid a lot of money to try to get what he thought he had the right of in the first place by getting a Government agency to say what he can do and not do to some of his land.

There is no reason why we need four different Government agencies' definition of what a wetland is. How do you expect a poor farmer to understand what a wetland is, or even a rich farmer understand what a wetland is if four Government agencies do not know what a wetland is?

In fact, in the farmer's case I just told you about, the determination of what was a wetland or not a wetland was based on a 1989 Corps of Engineers manual that is not even being used anymore.

(Mr. GRAMS assumed the chair).

Mr. GRASSLEY. Mr. President, in my opinion no other area of regulation needs reform as desperately as wetlands regulation. No less than four Federal agencies claim jurisdiction over agricultural wetlands and these agencies often use conflicting manuals and procedures in delineating and regulating the use of wetlands.

I have addressed this body several times in the past regarding the complex, confusing, illogical, and downright burdensome way that the Federal Government regulates wetlands in agricultural areas.

Most of my colleagues must agree with this assessment because in March, the Senate passed by unanimous consent, a moratorium on new wetland delineations. Subsequently, the administration agreed with the Senate and imposed its own moratorium. This will allow Congress the opportunity to reform existing wetlands policy.

Even if Congress does not act, however, S. 343 will force agencies to recognize common sense and sound science when promulgating wetland regulations. And when agencies begin to act in a rational manner, maybe we can avoid situations like the one in Iowa that I am about to describe.

Mr. President, as I travel across my State and talk to farmers and other property owners, I hear many stories of senseless regulations and bureaucratic nightmares. But the problems of a farmer in Greene County, IA, may be the most vivid example of the need for common sense in rulemaking.

This particular farm in Greene County has been continuously cropped for almost 90 years. The original drainage system was installed in 1906.

As this chart illustrates, from 1906 until 1992, the land was framed and no wetland existed on this part of the farm. In 1992 this all changed.

During the summer of 1992, the local drainage district decided to replace the original system with an open ditch. This was all carried out in consultation with the Soil Conservation Service.

Prior to the construction of the ditch, the owner of the farm was informed by the SCS that the ditch would result in the creation of a small wetland, about 150 feet on each side of the ditch.

After the ditch was installed, however, the SCS district office changed its mind and classified 14.2 acres as ''converted wetland.''

Now once a farmer has part of his farm declared a wetland, it can no longer be cropped. So in effect, the Government is depriving this farmer of the economic use of his own property, even though the farmer did not create the wetland, and even though the land had been farmland, not a wetland, for the past 90 years.

At that point, the only recourse available to the farmer was through

the appeals process. In this case, however, the appeals process only made the situation much worse.

Before the first appeal, the SCS had already changed its initial wetlands classification of 14.2 acres to 10.8 acres. The SCS area office confirmed this designation during the first appeal. At the second appeal, the State SCS office decided that the wetland was actually 17 acres. And at the final appeal level, at the SCS national office, the wetland was determined to be 28.2 acres.

Mr. President, as you can see on this chart, this farm was cropped from 86 years. But then, through no fault of the farmer, the SCS decided there was a wetland on this land. And this wetland apparently was expanding rapidly—from 10.8 acres to over 28 acres in less than 2 years

Keep in mind that nothing had happened during this time that actually changed the size of the wetland. The farmer did not farm the land. The drainage system was not expanded. And no additional water was present in the area.

The only difference was the way each level of the agency interpreted the wetland regulations. And undoubtedly, the lack of common sense contained in the underlying regulations caused this confusion within the agency.

All of this sounds ridiculous until you consider that a real price is paid by our citizens who are subject to these regulations. The farmer in Greene County, IA will lose thousands of dollars in future income because the bureaucracy decided that he could not farm his land. Even though this land had been farmed continuously for the past 90 years.

It is cases such as this that undermine the faith that Americans have in their Government. It is cases such as this that motivate the electorate to throw out a party that has been in control of Congress for the past 40 years. And if S. 343 will help just one person like the farmer in Greene County, IA, then the Senate should pass this bill and the President should sign it into law.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I am about to propound a unanimous-consent request that I think will get us to the Boxer amendment. I ask unanimous consent that, following the remarks of myself and Senator MURRAY—I will not be very long—the Johnston amendment be laid aside and that Senator BOXER be recognized to offer her amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Reserving the right to object. And I appreciate my friend from Utah working on this issue of the environmental cleanup, and I hope we will successfully do it. I note that we have been on the amendment for about 3 hours and that it is not a delay coming from this side. I simply mention that to say that I hope we will be able to get time agreements from now on and be able to move expeditiously. We made great progress today so far. And we will continue.

Mr. HATCH. I appreciate that.

Mr. GLENN. Reserving the right to object. I wonder if it will be possible to get a time agreement. Will the Senator give us any idea how much time it will take? We are going to try to—I will tell everybody I would like to get time agreements on everything that comes out from now on.

Mr. HATCH. I do not think Senator BOXER——

Mr. GLENN. We have to wait on the time agreement. She can go ahead and proceed. I will not object to the UC.

Mr. HATCH. Can I reverse the UC, because I understand Senator MURRAY is only going to take 3 or 4 minutes.

Mr. GLENN. Senator BOXER has to come to the floor.

Mr. HATCH. Senator MURRAY is going to speak on Superfund. Why do I not reverse that, have her speak first, I will speak second, and then Senator BOXER can offer her amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank the Senator from Utah. I simply rise today to support the Johnston-Baucus amendment that strips the Superfund provisions from this bill. It touches on one of the most pressing issues facing my home State of Washington: the cleanup of the tons of nuclear waste that is contained at the Hanford Reservation.

The bill before us specifically targets Superfund sites and subjects activities costing more than $10 million to immediate cost-benefit analysis and risk assessment. This assessment will be required even where agreements have been reached and cleanup has already begun. All cleanup would come to a screeching halt so that the Government could analyze the benefits of cleaning up toxic waste.

Hanford cleanup has come under intense and justified scrutiny by this Congress. Its critics have railed that it has cost billions of dollars and has resulted only in reams of documents, not any actual cleanup. This bill would only exacerbate those problems. Cleanup that is finally getting underway would stop while the Department of Energy conducted potentially dozens of more analyses on the benefits of cleaning up the nuclear waste that today is seeping toward the Columbia River.

Mr. President, there is a lot we do not know about the risks of radioactive waste. We do not know how to clean it up, where to store it, or how fast it migrates, or any number of things. Because so much is unknown, a detailed generic cost-benefit analysis and risk-assessment process would be endless and very costly.

Let me add, however, that while I do not support the cumbersome approach taken in the current bill, I do believe the Hanford site and other Superfund sites will benefit from a cost-benefit analysis. In fact, I will encourage us to move toward a bill that incorporates risk assessment and cost-benefit analysis into the decisionmaking structure at Hanford. We should try to develop a bill that requires consideration of costs but does not impose inefficiencies or unnecessary taxpayer-funded analytical costs that result only in reports, but we should not do it on this bill.

Finally, I would like to remind this body that the Department of Energy is facing tremendous budget cuts and possibly elimination. Burdening it with this review process while at the same time demanding that it improve the pace of its cleanup and reduce costs is a recipe for disaster in my home State.

This bill is not the place to make the reforms most of us believe are necessary to improve Superfund. The place to make those changes is in reauthorization of CERCLA before the authorizing committee with its indepth knowledge of this important law.

For these reasons, I urge my colleagues to support the Johnston-Baucus amendment to strip the Superfund provisions from this bill. Both current and future citizens who live near our Nation's nuclear waste facilities will thank you.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

RACIST ACTIVITIES AN OUTRAGE

Mr. HATCH. Mr. President, I am going to divert from this bill for a minute on a matter that I consider to be of extreme importance. I have been reading some accounts in the newspaper, and I would like to take a moment to address something that deeply distresses me.

According to certain press reports, several current and former Alcohol, Tobacco and Firearm agents participated in a so-called good old boys roundup, an event that is alleged to have involved hateful, racist conduct.

As many of my colleagues are no doubt aware, this event involved hundreds of Federal, State, and local law enforcement agents. When African-American agents tried to attend the event, however, they were turned away. According to various news reports, participants at the event displayed blatantly racist signs and sold T-shirts displaying, among other things, Dr. Martin Luther King's face behind a target and a picture of an African-American man sprawled across a police car with the words ''Boys on the Hood.''

Apparently other things were available for sale that are, frankly, too despicable to even be mentioned on the Senate floor. I can only express my outrage and anger that such activities of this type could occur in America and especially when law enforcement officials are involved.